

Representative Paul Ray proposes the following substitute bill:

DISABILITY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

To the extent possible, this bill replaces outdated terms relating to persons with a disability with updated terms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ except where impracticable due to language used in federal law, uniform law, interstate compacts, or case law, replaces terms as follows:
 - replaces the term "mental retardation," and its variations, with "intellectual disability";
 - replaces the term "crippled," with "disability";
 - replaces the term "disabled person," and similar references, with the term "person with a disability" or similar variations;
 - replaces the term "mentally ill person" and similar references, with the term "person with a mental illness" or similar variations;
 - replaces the term "paraplegic" and similar references, with the term "person with paraplegia" or similar variations;
 - replaces the term "guilty and mentally ill," with the term "guilty with a mental



26 illness";

27 • replaces the term "guilty of a lesser offense and mentally ill," with the term

28 "guilty of a lesser offense with a mental illness"; and

29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **9-4-801**, as last amended by Laws of Utah 2010, Chapter 286

37 **9-4-802**, as last amended by Laws of Utah 2010, Chapter 278

38 **9-4-903**, as last amended by Laws of Utah 2001, Chapter 319

39 **17B-2a-823**, as renumbered and amended by Laws of Utah 2007, Chapter 329

40 **19-6-102**, as last amended by Laws of Utah 2007, Chapter 72

41 **20A-1-501**, as last amended by Laws of Utah 2006, Chapter 264

42 **20A-3-108**, as last amended by Laws of Utah 2007, Chapter 75

43 **20A-3-403**, as last amended by Laws of Utah 2006, Chapter 273

44 **20A-3-406**, as last amended by Laws of Utah 2010, Chapter 169

45 **20A-3-408**, as last amended by Laws of Utah 2002, Chapter 112

46 **20A-3-410**, as last amended by Laws of Utah 2006, Chapter 16

47 **20A-8-401**, as last amended by Laws of Utah 2010, Chapter 177

48 **23-19-1**, as last amended by Laws of Utah 2008, Chapter 69

49 **23-19-14**, as last amended by Laws of Utah 2003, Chapter 171

50 **23-19-36**, as last amended by Laws of Utah 1999, Chapter 128

51 **23-19-38.3**, as enacted by Laws of Utah 2010, Chapter 192

52 **23-20-12**, as last amended by Laws of Utah 1975, Chapter 60

53 **24-1-7**, as last amended by Laws of Utah 2004, Chapter 296

54 **26-1-18**, as last amended by Laws of Utah 1991, Chapter 112

55 **26-2-27**, as last amended by Laws of Utah 1998, Chapter 263

56 **26-4-7**, as last amended by Laws of Utah 2001, Chapter 278

- 57 **26-10-1**, as last amended by Laws of Utah 2001, Chapter 73
- 58 **26-10-2**, as enacted by Laws of Utah 1981, Chapter 126
- 59 **26-10-6**, as last amended by Laws of Utah 2010, Chapter 286
- 60 **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
- 61 **26-18-3.1**, as enacted by Laws of Utah 1994, Chapter 314
- 62 **26-18-501**, as enacted by Laws of Utah 2004, Chapter 215
- 63 **26-19-13.5**, as last amended by Laws of Utah 2004, Chapter 72
- 64 **26-21-3**, as last amended by Laws of Utah 2008, Chapter 74
- 65 **26-21-9.5**, as last amended by Laws of Utah 2009, Chapter 267
- 66 **26-21-13.5**, as last amended by Laws of Utah 1993, Chapter 201
- 67 **26-35a-102**, as enacted by Laws of Utah 2004, Chapter 284
- 68 **26-35a-103**, as last amended by Laws of Utah 2009, Chapter 83
- 69 **26-35a-108**, as enacted by Laws of Utah 2005, Chapter 31
- 70 **31A-1-301**, as last amended by Laws of Utah 2010, Chapter 10
- 71 **31A-22-611**, as last amended by Laws of Utah 2006, Chapter 188
- 72 **31A-22-614**, as last amended by Laws of Utah 2001, Chapter 116
- 73 **31A-22-625**, as last amended by Laws of Utah 2010, Chapters 10 and 68
- 74 **31A-22-802**, as last amended by Laws of Utah 2004, Chapter 90
- 75 **31A-23a-114**, as renumbered and amended by Laws of Utah 2003, Chapter 298
- 76 **31A-26-215**, as enacted by Laws of Utah 2001, Chapter 116
- 77 **31A-36-111**, as last amended by Laws of Utah 2009, Chapter 355
- 78 **34-38-14**, as last amended by Laws of Utah 2010, Chapter 284
- 79 **34-41-106**, as last amended by Laws of Utah 1997, Chapter 375
- 80 **34A-2-107**, as last amended by Laws of Utah 2010, Chapter 286
- 81 **34A-2-413**, as last amended by Laws of Utah 2010, Chapter 59
- 82 **34A-2-703**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 83 **34A-2-902**, as last amended by Laws of Utah 2008, Chapter 3
- 84 **34A-2-903**, as renumbered and amended by Laws of Utah 2005, Chapter 243
- 85 **34A-3-104**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 86 **34A-3-107**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 87 **34A-4-101**, as renumbered and amended by Laws of Utah 1997, Chapter 375

- 88 **34A-4-102**, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 89 **34A-8a-102**, as renumbered and amended by Laws of Utah 2009, Chapter 158
- 90 **34A-8a-301**, as renumbered and amended by Laws of Utah 2009, Chapter 158
- 91 **34A-8a-302**, as renumbered and amended by Laws of Utah 2009, Chapter 158
- 92 **34A-8a-303**, as renumbered and amended by Laws of Utah 2009, Chapter 158
- 93 **39-1-59**, as last amended by Laws of Utah 1988, Chapter 210
- 94 **41-6a-1011**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 95 **41-22-2**, as last amended by Laws of Utah 2009, Chapters 289 and 311
- 96 **49-11-403**, as last amended by Laws of Utah 2010, Chapters 257, 266, and 321
- 97 **49-11-404**, as last amended by Laws of Utah 2010, Chapters 266 and 321
- 98 **49-12-601**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 99 **49-14-502**, as last amended by Laws of Utah 2003, Chapter 240
- 100 **49-14-504**, as last amended by Laws of Utah 2009, Chapter 224
- 101 **49-15-502**, as last amended by Laws of Utah 2003, Chapter 240
- 102 **49-15-504**, as last amended by Laws of Utah 2009, Chapter 224
- 103 **49-16-201**, as last amended by Laws of Utah 2010, Chapter 266
- 104 **49-16-502**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 105 **49-16-504**, as last amended by Laws of Utah 2003, Chapter 240
- 106 **49-16-602**, as last amended by Laws of Utah 2007, Chapter 130
- 107 **49-21-102**, as last amended by Laws of Utah 2007, Chapter 130
- 108 **49-21-401**, as last amended by Laws of Utah 2010, Chapter 321
- 109 **49-21-403**, as last amended by Laws of Utah 2010, Chapters 266 and 321
- 110 **49-22-402**, as enacted by Laws of Utah 2010, Chapter 266
- 111 **53-3-807**, as last amended by Laws of Utah 2009, Chapter 315
- 112 **53-10-208.1**, as last amended by Laws of Utah 2009, Chapter 356
- 113 **53A-1a-704**, as last amended by Laws of Utah 2009, Chapter 197
- 114 **53A-3-204**, as enacted by Laws of Utah 1988, Chapter 2
- 115 **53A-9-103**, as last amended by Laws of Utah 2001, Chapters 73 and 86
- 116 **53A-15-205**, as last amended by Laws of Utah 2002, Chapter 210
- 117 **53A-17a-112**, as last amended by Laws of Utah 2010, Chapter 3
- 118 **53A-17a-127**, as last amended by Laws of Utah 2010, Chapter 305

- 119 **53B-23-101**, as enacted by Laws of Utah 2006, Chapter 301
- 120 **54-1-1.6**, as last amended by Laws of Utah 2002, Chapter 176
- 121 **57-21-5**, as last amended by Laws of Utah 1993, Chapter 114
- 122 **58-15-2**, as last amended by Laws of Utah 1993, Chapter 297
- 123 **58-15-3**, as repealed and reenacted by Laws of Utah 1993, Chapter 297
- 124 **58-17b-503**, as last amended by Laws of Utah 2005, Chapter 160
- 125 **58-17b-701**, as last amended by Laws of Utah 2008, Chapter 382
- 126 **58-26a-307**, as last amended by Laws of Utah 2009, Chapter 183
- 127 **58-31b-102**, as last amended by Laws of Utah 2008, Chapters 214 and 382
- 128 **58-31b-401**, as last amended by Laws of Utah 2008, Chapters 214 and 382
- 129 **58-60-114**, as last amended by Laws of Utah 2009, Chapter 356
- 130 **58-60-509**, as last amended by Laws of Utah 2009, Chapter 356
- 131 **58-61-602**, as last amended by Laws of Utah 2009, Chapter 356
- 132 **58-67-601**, as last amended by Laws of Utah 2008, Chapter 382
- 133 **58-68-601**, as last amended by Laws of Utah 2008, Chapter 382
- 134 **58-69-601**, as last amended by Laws of Utah 2008, Chapter 382
- 135 **58-71-601**, as last amended by Laws of Utah 2008, Chapter 382
- 136 **58-73-401**, as last amended by Laws of Utah 2010, Chapter 324
- 137 **59-2-1101**, as last amended by Laws of Utah 2007, Chapter 329
- 138 **59-2-1104**, as last amended by Laws of Utah 2010, Chapter 71
- 139 **59-2-1105**, as last amended by Laws of Utah 2008, Chapters 104 and 382
- 140 **59-2-1109**, as last amended by Laws of Utah 2009, Chapter 72
- 141 **59-7-602**, as enacted by Laws of Utah 1993, Chapter 169
- 142 **59-10-1011**, as renumbered and amended by Laws of Utah 2006, Chapter 223
- 143 **62A-1-108.5**, as last amended by Laws of Utah 2008, Chapter 382
- 144 **62A-2-101**, as last amended by Laws of Utah 2009, Chapter 75
- 145 **62A-2-120**, as last amended by Laws of Utah 2010, Chapter 365
- 146 **62A-2-122**, as last amended by Laws of Utah 2009, Chapter 75
- 147 **62A-4a-1010**, as last amended by Laws of Utah 2008, Chapters 3 and 299
- 148 **62A-5-101**, as last amended by Laws of Utah 2009, Chapter 75
- 149 **62A-5-103**, as last amended by Laws of Utah 2008, Chapter 382

- 150 **62A-5-104**, as last amended by Laws of Utah 2009, Chapter 75
- 151 **62A-5-110**, as last amended by Laws of Utah 1998, Chapter 145
- 152 **62A-5-201**, as last amended by Laws of Utah 2010, Chapter 42
- 153 **62A-5-206**, as last amended by Laws of Utah 1996, Chapter 79
- 154 **62A-5-207**, as last amended by Laws of Utah 1992, Chapter 104
- 155 **62A-5-302**, as last amended by Laws of Utah 2004, Chapter 114
- 156 **62A-5-304**, as last amended by Laws of Utah 1991, Chapter 207
- 157 **62A-5-305**, as last amended by Laws of Utah 1991, Chapter 207
- 158 **62A-5-308**, as last amended by Laws of Utah 1993, Chapter 132
- 159 **62A-5-309**, as last amended by Laws of Utah 2004, Chapter 114
- 160 **62A-5-310**, as enacted by Laws of Utah 1988, Chapter 1
- 161 **62A-5-311**, as last amended by Laws of Utah 2004, Chapter 114
- 162 **62A-5-312**, as last amended by Laws of Utah 2004, Chapter 114
- 163 **62A-5-313**, as last amended by Laws of Utah 2008, Chapter 382
- 164 **62A-5-316**, as enacted by Laws of Utah 1988, Chapter 1
- 165 **62A-5-317**, as last amended by Laws of Utah 2004, Chapter 114
- 166 **62A-5-318**, as enacted by Laws of Utah 1993, Chapter 132
- 167 **62A-6-101**, as last amended by Laws of Utah 2005, Chapter 254
- 168 **62A-11-111**, as last amended by Laws of Utah 1994, Chapter 12
- 169 **62A-15-605**, as last amended by Laws of Utah 2010, Chapter 286
- 170 **62A-15-608**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 171 Chapter 8
- 172 **62A-15-610**, as last amended by Laws of Utah 2003, Chapter 195
- 173 **62A-15-616**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 174 Chapter 8
- 175 **62A-15-619**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 176 Chapter 8
- 177 **62A-15-629**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 178 Chapter 8
- 179 **62A-15-631**, as last amended by Laws of Utah 2003, Chapter 303
- 180 **62A-15-632**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,

181 Chapter 8
182 **62A-15-644**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
183 Chapter 8
184 **62A-15-706**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
185 Chapter 8
186 **62A-15-902**, as last amended by Laws of Utah 2010, Chapter 218
187 **63M-9-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
188 **64-9b-1**, as last amended by Laws of Utah 1998, Chapter 363
189 **67-19-27**, as last amended by Laws of Utah 2009, Chapter 344
190 **68-3-12.5**, as enacted by Laws of Utah 2010, Chapter 254
191 **71-10-1**, as last amended by Laws of Utah 2007, Chapter 329
192 **71-10-2**, as last amended by Laws of Utah 2000, Chapter 134
193 **71-11-2**, as last amended by Laws of Utah 2007, Chapter 173
194 **72-10-601**, as last amended by Laws of Utah 2007, Chapter 329
195 **75-2-801**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
196 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104
197 **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73
198 **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150
199 **75-5-425**, as last amended by Laws of Utah 1977, Chapter 194
200 **75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
201 **76-3-203.5**, as last amended by Laws of Utah 2010, Chapter 334
202 **76-3-406**, as last amended by Laws of Utah 2007, Chapter 339
203 **76-5-109**, as last amended by Laws of Utah 2008, Chapter 45
204 **76-5-110**, as last amended by Laws of Utah 2009, Chapter 219
205 **77-13-1**, as last amended by Laws of Utah 2007, Chapter 306
206 **77-16a-101**, as last amended by Laws of Utah 1994, Chapter 13
207 **77-16a-102**, as last amended by Laws of Utah 2009, Chapter 206
208 **77-16a-103**, as last amended by Laws of Utah 2002, Chapter 61
209 **77-16a-104**, as last amended by Laws of Utah 2003, Chapter 206
210 **77-16a-201**, as last amended by Laws of Utah 2002, Chapter 61
211 **77-16a-202**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

212 77-16a-203, as last amended by Laws of Utah 2005, Chapter 61
 213 77-16a-204, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
 214 77-16a-205, as enacted by Laws of Utah 1992, Chapter 171
 215 77-16a-302, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
 216 77-16a-304, as last amended by Laws of Utah 2005, Chapter 61
 217 77-16a-306, as enacted by Laws of Utah 1992, Chapter 171
 218 77-18-1, as last amended by Laws of Utah 2009, Chapter 81
 219 77-18-1.1, as last amended by Laws of Utah 2009, Chapter 337
 220 77-18-8.3, as enacted by Laws of Utah 1996, Chapter 210
 221 77-18-8.5, as enacted by Laws of Utah 1996, Chapter 210
 222 77-27-2, as last amended by Laws of Utah 2010, Chapter 110
 223 77-27-5.3, as enacted by Laws of Utah 1996, Chapter 161
 224 77-27-10.5, as last amended by Laws of Utah 1997, Chapter 10
 225 77-33-5, as enacted by Laws of Utah 1980, Chapter 15
 226 77-38-302, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
 227 amended by Laws of Utah 2008, Chapter 3
 228 78A-2-302, as renumbered and amended by Laws of Utah 2008, Chapter 3
 229 78A-6-103, as last amended by Laws of Utah 2009, Chapter 146
 230 78A-6-117 (Superseded 07/01/11), as renumbered and amended by Laws of Utah
 231 2008, Chapter 3
 232 78A-6-117 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapter 276
 233 78A-11-108, as renumbered and amended by Laws of Utah 2008, Chapter 3
 234 78B-3-110, as renumbered and amended by Laws of Utah 2008, Chapter 3

235

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

237 Section 1. Section 9-4-801 is amended to read:

238 **9-4-801. Creation.**

239 (1) There is created the Homeless Coordinating Committee.

240 (2) (a) The committee shall consist of the state planning coordinator, the state
 241 superintendent of public instruction, the chair of the board of trustees of the Utah Housing
 242 Corporation, and the executive directors of the Department of Human Services, the Department

243 of Corrections, the Department of Community and Culture, the Department of Workforce
244 Services, and the Department of Health, or their designees.

245 (b) The governor shall appoint the chair from among these members.

246 (3) The governor may also appoint as members of the committee representatives of
247 local governments, local housing authorities, local law enforcement agencies, and of federal
248 and private agencies and organizations concerned with the homeless, [~~mentally ill~~] persons
249 with a mental illness, the elderly, single-parent families, substance abusers, and persons with a
250 disability.

251 (4) (a) Except as required by Subsection (4)(b), as terms of current committee members
252 expire, the governor shall appoint each new member or reappointed member to a four-year
253 term.

254 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
255 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
256 committee members are staggered so that approximately half of the committee is appointed
257 every two years.

258 (c) A person appointed under this Subsection (4) may not be appointed to serve more
259 than three consecutive terms.

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

262 (6) A member may not receive compensation or benefits for the member's service, but
263 may receive per diem and travel expenses in accordance with:

264 (a) Section 63A-3-106;

265 (b) Section 63A-3-107; and

266 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
267 63A-3-107.

268 Section 2. Section **9-4-802** is amended to read:

269 **9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Pamela**
270 **Atkinson Homeless Account.**

271 (1) (a) The Homeless Coordinating Committee shall work to ensure that services
272 provided to the homeless by state agencies, local governments, and private organizations are
273 provided in a cost-effective manner.

274 (b) Programs funded by the committee shall emphasize emergency housing and
275 self-sufficiency, including placement in meaningful employment or occupational training
276 activities and, where needed, special services to meet the unique needs of the homeless who:

277 (i) have families with children~~[, or who are mentally ill, disabled, or];~~

278 (ii) have a disability or a mental illness; or

279 (iii) suffer from other serious challenges to employment and self-sufficiency.

280 (c) The committee may also fund treatment programs to ameliorate the effects of
281 substance abuse or a disability.

282 (2) The committee members designated in Subsection 9-4-801(2) shall:

283 (a) award contracts funded by the Pamela Atkinson Homeless Account with the advice
284 and input of those designated in Subsection 9-4-801(3);

285 (b) consider need, diversity of geographic location, coordination with or enhancement
286 of existing services, and the extensive use of volunteers; and

287 (c) give priority for funding to programs that serve the homeless who ~~[are mentally ill]~~
288 have a mental illness and who are in families with children.

289 (3) (a) In any fiscal year, no more than 80% of the funds in the Pamela Atkinson
290 Homeless Account may be allocated to organizations that provide services only in Salt Lake,
291 Davis, Weber, and Utah Counties.

292 (b) The committee may:

293 (i) expend up to 3% of its annual appropriation for administrative costs associated with
294 the allocation of funds from the Pamela Atkinson Homeless Account, and up to 2% of its
295 annual appropriation for marketing the account and soliciting donations to the account; and

296 (ii) pay for the initial costs of the State Tax Commission in implementing Section
297 59-10-1306 from the account.

298 (4) (a) The committee may not expend, except as provided in Subsection (4)(b), an
299 amount equal to the greater of \$50,000 or 20% of the amount donated to the Pamela Atkinson
300 Homeless Account during fiscal year 1988-89.

301 (b) If there are decreases in contributions to the account, the committee may expend
302 funds held in the account to provide program stability, but the committee shall reimburse the
303 amounts of those expenditures to the account.

304 (5) The committee shall make an annual report to the Economic Development and

305 Human Resources Appropriations Subcommittee regarding the programs and services funded
306 by contributions to the Pamela Atkinson Homeless Account.

307 (6) The money in the Pamela Atkinson Homeless Account shall be invested by the
308 state treasurer according to the procedures and requirements of Title 51, Chapter 7, State
309 Money Management Act, except that all interest or other earnings derived from the restricted
310 account shall be deposited in the restricted account.

311 Section 3. Section **9-4-903** is amended to read:

312 **9-4-903. Definitions.**

313 As used in this part the following words and terms have the following meanings, unless
314 a different meaning clearly appears from the context:

315 (1) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures,
316 interim certificates, or other evidences of financial indebtedness of the corporation authorized
317 to be issued under the provisions of this part.

318 (2) "Construction loan" means a short-term advance of money for the purpose of
319 constructing residential housing for low and moderate income persons.

320 (3) "Corporation" means the Utah Housing Corporation created by Section 9-4-904,
321 which, prior to July 1, 2001, was named the Utah Housing Finance Agency.

322 (4) "Employee of the corporation" means any individual who is employed by the
323 corporation but who is not a trustee of the corporation.

324 (5) "Financial assistance" includes:

325 (a) a loan, whether interest or noninterest bearing, secured or unsecured;

326 (b) a loan that converts to a grant upon the occurrence of specified conditions;

327 (c) a development loan;

328 (d) a grant;

329 (e) an award;

330 (f) a subsidy;

331 (g) a guarantee;

332 (h) a warranty;

333 (i) a lease;

334 (j) a payment on behalf of a borrower of an amount usually paid by a borrower,

335 including a down payment;

336 (k) any other form of financial assistance that helps provide affordable housing for low
337 and moderate income persons; or

338 (l) any combination of the foregoing.

339 (6) "Housing development" means a residential housing project, which includes
340 residential housing for low and moderate income persons.

341 (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates,
342 purchases, or owns a housing development that is or will be subject to legally enforceable
343 restrictive covenants that require the housing development to provide, at least in part,
344 residential housing to low and moderate income persons, including a local public body, a
345 nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability
346 company, a joint venture, a subsidiary of the corporation, or any subsidiary of the subsidiary, a
347 cooperative, a mutual housing organization, or any other type of entity or arrangement that
348 helps provide affordable housing for low and moderate income persons.

349 (8) "Interest rate contract" means interest rate exchange contracts, interest rate floor
350 contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution
351 or policy adopted or approved by the trustees.

352 (9) "Local public body" means the state, any municipality, county, district, or other
353 subdivision or instrumentality of the state, including redevelopment agencies and housing
354 authorities created under Part 6, Housing Authorities.

355 (10) "Low and moderate income persons" means persons, irrespective of race, religion,
356 creed, national origin, or sex, as determined by the corporation to require such assistance as is
357 made available by this part on account of insufficient personal or family income taking into
358 consideration factors, including:

359 (a) the amount of income that persons and families have available for housing needs;

360 (b) the size of family;

361 (c) whether or not a person is a single head of household;

362 (d) the cost and condition of residential housing available; and

363 (e) the ability of persons and families to compete successfully in the normal private
364 housing market and to pay the amounts at which private enterprise is providing decent, safe,
365 and sanitary housing.

366 [~~(13)~~] (11) "Mortgage" means a mortgage, deed of trust, or other instrument securing a

367 mortgage loan and constituting a lien on real property (the property being held in fee simple or
368 on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of
369 not less than the term for repayment of the mortgage loan secured by the mortgage) improved
370 or to be improved by residential housing, creating a lien which may be first priority or
371 subordinate.

372 [(H)] (12) "Mortgage lender" means any bank, trust company, savings and loan
373 association, credit union, mortgage banker, or other financial institution authorized to transact
374 business in the state, any local public body, or any other entity, profit or nonprofit, that makes
375 mortgage loans.

376 [(H)] (13) "Mortgage loan" means a loan secured by a mortgage, which loan may bear
377 interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of
378 which are used for the purpose of financing the construction, development, rehabilitation, or
379 purchase of residential housing for low and moderate income persons, including low and
380 moderate income persons who:

381 (a) are first-time homebuyers[;];

382 (b) are single heads of household[;];

383 (c) are elderly[;];

384 (d) are homeless[~~; or disabled~~]; or

385 (e) have a disability.

386 (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and
387 repair of residential housing.

388 (15) "Residential housing" means a specific work or improvement within this state
389 undertaken primarily to provide dwelling accommodations, including land, buildings, and
390 improvements to land and buildings, whether in one to four family units or multifamily units,
391 and other incidental or appurtenant nonhousing facilities, or as otherwise specified by the
392 agency.

393 (16) "State" means the state of Utah.

394 (17) "State housing credit ceiling" means the amount specified in Subsection
395 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

396 Section 4. Section **17B-2a-823** is amended to read:

397 **17B-2a-823. Public transit district special services.**

398 (1) As used in this section, "bureau" means a recreational, tourist, or convention bureau
399 established under Section 17-31-2.

400 (2) (a) A public transit district may lease its buses to private certified public carriers or
401 operate transit services requested by a public entity if a bureau certifies that privately owned
402 carriers furnishing like services or operating like equipment within the area served by the
403 bureau:

- 404 (i) have declined to provide the service; or
- 405 (ii) do not have the equipment necessary to provide the service.

406 (b) A public transit district may lease its buses or operate services as authorized under
407 Subsection (2)(a) outside of the area served by the district.

408 (3) If part or all of the transportation services are paid for by public funds, a public
409 transit district may:

410 (a) provide school bus services for transportation of pupils and supervisory personnel
411 between homes and school and other related school activities within the area served by the
412 district; or

413 (b) provide the transportation of passengers covered by [~~an elderly or disabled persons~~]
414 a program within the district for people who are elderly or who have a disability.

415 (4) Notwithstanding the provisions in Subsection (3), a municipality or county is not
416 prohibited from providing the transportation services identified in Subsection (3).

417 Section 5. Section **19-6-102** is amended to read:

418 **19-6-102. Definitions.**

419 As used in this part:

420 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
421 19-1-106.

422 (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at
423 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or
424 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the
425 facility or site.

426 (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
427 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or
428 disposal.

429 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
430 does not include a facility that:

431 (i) receives waste for recycling;

432 (ii) receives waste to be used as fuel, in compliance with federal and state
433 requirements; or

434 (iii) is solely under contract with a local government within the state to dispose of
435 nonhazardous solid waste generated within the boundaries of the local government.

436 (4) "Construction waste or demolition waste":

437 (a) means waste from building materials, packaging, and rubble resulting from
438 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings,
439 and other structures, and from road building and land clearing; and

440 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation
441 or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar
442 hazardous or potentially hazardous materials.

443 (5) "Demolition waste" has the same meaning as the definition of construction waste in
444 this section.

445 (6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
446 placing of any solid or hazardous waste into or on any land or water so that the waste or any
447 constituent of the waste may enter the environment, be emitted into the air, or discharged into
448 any waters, including groundwaters.

449 (7) "Executive secretary" means the executive secretary of the board.

450 (8) "Generation" or "generated" means the act or process of producing nonhazardous
451 solid or hazardous waste.

452 (9) "Hazardous waste" means a solid waste or combination of solid wastes other than
453 household waste which, because of its quantity, concentration, or physical, chemical, or
454 infectious characteristics may cause or significantly contribute to an increase in mortality or an
455 increase in serious irreversible or incapacitating reversible illness or may pose a substantial
456 present or potential hazard to human health or the environment when improperly treated,
457 stored, transported, disposed of, or otherwise managed.

458 (10) "Health facility" means hospitals, psychiatric hospitals, home health agencies,
459 hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for

460 [~~the mentally retarded~~] people with an intellectual disability, residential health care facilities,
461 maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned
462 or operated by health maintenance organizations, and state renal disease treatment centers
463 including free standing hemodialysis units, the offices of private physicians and dentists
464 whether for individual or private practice, veterinary clinics, and mortuaries.

465 (11) "Household waste" means any waste material, including garbage, trash, and
466 sanitary wastes in septic tanks, derived from households, including single-family and
467 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,
468 campgrounds, picnic grounds, and day-use recreation areas.

469 (12) "Infectious waste" means a solid waste that contains or may reasonably be
470 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by
471 a susceptible host could result in an infectious disease.

472 (13) "Manifest" means the form used for identifying the quantity, composition, origin,
473 routing, and destination of hazardous waste during its transportation from the point of
474 generation to the point of disposal, treatment, or storage.

475 (14) "Mixed waste" means any material that is a hazardous waste as defined in this
476 chapter and is also radioactive as defined in Section 19-3-102.

477 (15) "Modification plan" means a plan under Section 19-6-108 to modify a facility or
478 site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing
479 of hazardous waste.

480 (16) "Operation plan" or "nonhazardous solid or hazardous waste operation plan"
481 means a plan or approval under Section 19-6-108, including:

482 (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of
483 nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

484 (b) a closure plan;

485 (c) a modification plan; or

486 (d) an approval that the executive secretary is authorized to issue.

487 (17) "Permittee" means a person who is obligated under an operation plan.

488 (18) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a
489 waste treatment plant, water supply treatment plant, or air pollution control facility, or other
490 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting

491 from industrial, commercial, mining, or agricultural operations and from community activities
492 but does not include solid or dissolved materials in domestic sewage or in irrigation return
493 flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality
494 Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

495 (b) "Solid waste" does not include any of the following wastes unless the waste causes
496 a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

497 (i) certain large volume wastes, such as inert construction debris used as fill material;

498 (ii) drilling muds, produced waters, and other wastes associated with the exploration,
499 development, or production of oil, gas, or geothermal energy;

500 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste
501 generated primarily from the combustion of coal or other fossil fuels;

502 (iv) solid wastes from the extraction, beneficiation, and processing of ores and
503 minerals; or

504 (v) cement kiln dust.

505 (19) "Storage" means the actual or intended containment of solid or hazardous waste
506 either on a temporary basis or for a period of years in such a manner as not to constitute
507 disposal of the waste.

508 (20) "Transportation" means the off-site movement of solid or hazardous waste to any
509 intermediate point or to any point of storage, treatment, or disposal.

510 (21) "Treatment" means a method, technique, or process designed to change the
511 physical, chemical, or biological character or composition of any solid or hazardous waste so as
512 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for
513 recovery, amenable to storage, or reduced in volume.

514 (22) "Underground storage tank" means a tank which is regulated under Subtitle I of
515 the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

516 Section 6. Section **20A-1-501** is amended to read:

517 **20A-1-501. Candidate vacancies -- Procedure for filling.**

518 (1) The state central committee of a political party, for candidates for United States
519 senator, United States representative, governor, lieutenant governor, attorney general, state
520 treasurer, and state auditor, and for legislative candidates whose legislative districts encompass
521 more than one county, and the county central committee of a political party, for all other party

522 candidates seeking an office elected at a regular general election, may certify the name of
523 another candidate to the appropriate election officer if:

524 (a) after the close of the period for filing declarations of candidacy and continuing
525 through the date 15 days before the date of the primary election:

526 (i) only one or two candidates from that party have filed a declaration of candidacy for
527 that office; and

528 (ii) one or both:

529 (A) dies;

530 (B) resigns because of [~~becoming physically or mentally disabled~~] acquiring a physical
531 or mental disability as certified by a physician; or

532 (C) is disqualified by an election officer for improper filing or nominating procedures;
533 or

534 (b) after the close of the primary election and continuing through the date of the voter
535 registration deadline for the general election as established in Section 20A-2-102.5, the party's
536 candidate:

537 (i) dies;

538 (ii) resigns because of [~~becoming physically or mentally disabled~~] acquiring a physical
539 or mental disability as certified by a physician;

540 (iii) is disqualified by an election officer for improper filing or nominating procedures;
541 or

542 (iv) resigns to become a candidate for President or Vice President of the United States.

543 (2) If no more than two candidates from a political party have filed a declaration of
544 candidacy for an office elected at a regular general election and one resigns to become the party
545 candidate for another position, the state central committee of that political party, for candidates
546 for governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for
547 legislative candidates whose legislative districts encompass more than one county, and the
548 county central committee of that political party, for all other party candidates, may certify the
549 name of another candidate to the appropriate election officer.

550 (3) Each replacement candidate shall file a declaration of candidacy as required by
551 Title 20A, Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

552 (4) A replacement candidate may not be certified for an election during the period

553 beginning on the day after the date of the voter registration deadline and continuing through the
554 date of the election.

555 Section 7. Section **20A-3-108** is amended to read:

556 **20A-3-108. Assisting disabled, illiterate, or blind voters.**

557 (1) Any voter who has a disability, or is blind, [~~disabled,~~] unable to read or write,
558 unable to read or write the English language, or is physically unable to enter a polling place,
559 may be given assistance by a person of the voter's choice.

560 (2) The person providing assistance may not be:

561 (a) the voter's employer;

562 (b) an agent of the employer;

563 (c) an officer or agent of the voter's union; or

564 (d) a candidate.

565 (3) The person providing assistance may not request, persuade, or otherwise induce the
566 voter to vote for or vote against any particular candidate or issue or release any information
567 regarding the voter's selection.

568 (4) Each time a voter is assisted, the poll worker shall note that fact in the official
569 register and the pollbook.

570 Section 8. Section **20A-3-403** is amended to read:

571 **20A-3-403. Definitions.**

572 As used in this part:

573 (1) (a) "Ballot," [~~"disabled voter's ballot"~~] "ballot of a person with a disability," and
574 "official Utah military ballot" [~~means~~] mean the same ballots that will be submitted to and used
575 by other voters of Utah at the primary or general election.

576 (b) "Ballot" includes any official federal ballot provided by any Act of Congress to
577 allow voting by voters in the military service of the United States.

578 (2) "Federal postcard application form" means the form created by the Federal Voting
579 Assistance Program (FVAP) which allows military and overseas citizens to register to vote and
580 apply for an absentee ballot.

581 (3) "Hostile fire zone" means a geographical area in which forces are assigned on
582 official temporary duty and placed in imminent danger of being exposed to hostile fire or
583 explosion of hostile mines.

584 (4) "Military voter" means each person who is qualified as a voter under the Utah
585 Constitution and laws or who is eligible for registration and who would, by registration, be
586 qualified to vote, and who is:

587 (a) a member of the armed forces of the United States while in the active service or is
588 the spouse or dependent of that member;

589 (b) a member of the merchant marine of the United States or is the spouse or dependent
590 of that member;

591 (c) a civilian employee of the United States in all categories who is serving outside the
592 territorial limits of the United States whether or not the employee is subject to the civil service
593 laws and the Classification Act of 1949, and whether or not the employee is paid from funds
594 appropriated by the Congress or is the spouse or dependent of that member when residing with
595 or accompanying them; and

596 (d) a member of religious groups or welfare agencies assisting members of the armed
597 forces, who is officially attached to and serving with the armed forces, or is the spouse or
598 dependent of that member.

599 (5) "Overseas citizen voter" means:

600 (a) a member of the armed forces of the United States while in the active service or the
601 spouse or dependent of that member;

602 (b) a member of the merchant marines of the United States or the spouse or dependent
603 of that member; and

604 (c) a citizen of the United States residing outside the territorial limits of the United
605 States or the spouse or dependent of that member when residing with them or accompanying
606 them.

607 Section 9. Section **20A-3-406** is amended to read:

608 **20A-3-406. Absentee ballots for military personnel and citizens living overseas --**
609 **Federal postcard applications for ballot.**

610 (1) (a) An application for an absentee ballot for a military voter who is located in the
611 United States shall be filed in the county clerk's office no later than the Friday immediately
612 before the day of election.

613 (b) A member of the military voting an absentee ballot at the office of the clerk shall
614 apply and cast the absentee ballot no later than the day before the election.

615 (2) (a) (i) A military voter stationed overseas and an overseas citizen voter shall file an
616 application for a ballot with the county clerk no later than 20 days before the date of the
617 election.

618 (ii) The application for an overseas military voter under Subsection (2)(a)(i) may be
619 filed electronically as provided in Section 20A-3-408.5.

620 (b) Upon receipt of a properly completed application for an absentee ballot signed by a
621 military voter or an overseas citizen voter, the county clerk shall mail an appropriate ballot to
622 the military voter or overseas citizen voter.

623 (c) At the time the ballot is furnished, the county clerk shall record, in a record book
624 provided for that purpose:

625 (i) the name and home address of the military voter or overseas citizen voter to whom
626 the ballot is mailed;

627 (ii) the address to which the ballot was mailed; and

628 (iii) the date the ballot was mailed.

629 (d) If the military voter or overseas citizen voter sends the absentee ballot application
630 to the lieutenant governor, the lieutenant governor shall forward the application to the county
631 clerk of the county where the military voter or overseas citizen voter is entitled to vote.

632 (e) If the county clerk rejects the application for an absentee ballot from a military or
633 overseas citizen voter, the county clerk shall inform the voter of the reasons for rejecting the
634 application.

635 (3) A military voter or overseas citizen voter who ~~[is physically disabled and]~~ has a
636 disability and is unable to see or write may apply for a ballot by having a commissioned,
637 noncommissioned, or petty officer not below the rank of sergeant or other person authorized to
638 administer oaths to apply for a ballot on the voter's behalf.

639 (4) (a) A federal postcard application issued under the authority of any Act of Congress
640 or federal regulation is acceptable, when properly executed, as an application for a ballot under
641 this chapter.

642 (b) The county clerk shall accept the completed postcard application as an application
643 for ballots for each election for federal office held in the next general election and shall send
644 the applicant a ballot for each of those elections, as required by Section 20A-3-407.

645 (5) The county clerk shall retain the application for use at the time the ballot is received

646 from the military voter or overseas citizen voter.

647 Section 10. Section **20A-3-408** is amended to read:

648 **20A-3-408. Voting of ballot by military or overseas citizen voter.**

649 (1) (a) The military or overseas citizen voter shall:

650 (i) upon receipt of the ballot, mark it in secret;

651 (ii) seal it in the ballot envelope provided for that purpose; and

652 (iii) execute the registration and voting certificate and mailing affidavit on the back of
653 the envelope.

654 (b) (i) If the military or overseas citizen voter [~~is physically disabled so as to be~~] has a
655 disability that renders the voter unable to see or write, [~~he~~] the voter may request assistance
656 from two persons, each of whom shall be qualified to certify to the registration and voting
657 certificate.

658 (ii) The military or overseas citizen voter shall tell those persons how [~~he~~] the citizen
659 wishes [~~his~~] the citizen's ballot marked.

660 (iii) Those persons shall mark the ballot as directed by the military or overseas citizen
661 voter in [~~his~~] the voter's presence.

662 (iv) One of the persons assisting the military or overseas citizen voter shall:

663 (A) read to the voter the registration and voting certificate upon the ballot;

664 (B) fill in its blanks as the voter directs; and

665 (C) sign, on the line provided for the signature of the voter, the name of the voter and
666 [~~his~~] the person's own name.

667 (2) (a) The ballot shall be sent by any available mail service to the county clerk who
668 issued it.

669 (b) The military or overseas citizen voter is not required to return the ballot by
670 registered mail.

671 (3) The ballot is not valid unless:

672 (a) (i) it is clearly postmarked by the appropriate military post office, the Fleet Post
673 Office (FPO) or the Army/Air Force Post Office (APO), before election day and received in the
674 office of the election officer before noon on the day of the official canvass following the
675 election; or

676 (ii) the voter has signed the mailing affidavit on the back of the ballot envelope and the

677 ballot is received in the office of the election officer before noon on the day of the official
678 canvass following the election.

679 (b) The county clerk shall cause a mailing affidavit to be printed on the back of the
680 ballot envelope that is in substantially the following form:

681 "I certify that I am/may be unable to obtain a proper postmark and, subject to penalty of
682 law for false statements, swear or affirm that this ballot was voted and mailed before the day of
683 the election.

684 Signature of
685 Voter _____
686 Date _____

687 To be signed when voter is physically unable to see or write:

688 _____ Signature of
689 additional witness who is a commissioned, noncommissioned, or petty officer not below the
690 rank of sergeant or its equivalent, or another person authorized to administer oaths who does
691 swear, under penalty of law for false statements, that at the request of
692 _____(name of the voter), I completed the mailing affidavit because the
693 voter was unable to see or write because of a physical disability."

694 Section 11. Section **20A-3-410** is amended to read:

695 **20A-3-410. Duty of election judges.**

696 (1) (a) Voting precinct election judges shall open envelopes containing military or
697 overseas citizen voter ballots that are in their custody on election day at the polling places
698 during the time the polls are open as provided in this subsection.

699 (b) The election judges shall:

700 (i) first, open the outer envelope only; and

701 (ii) unless the ballot is a [~~disabled~~] ballot of a military or overseas citizen [~~voter's~~
702 ~~ballot~~] with a disability, compare the signature of the military or overseas citizen voter on the
703 application with the signature on the registration and voting certificate.

704 (2) (a) The judges shall register the military or overseas citizen voter to vote if the
705 voter is not already registered if the judges find that:

706 (i) the registration and voting certificate appears to be executed in proper form and
707 contains information qualifying the military or overseas citizen voter to be registered as a voter;

708 and

709 (ii) the signatures on the certificate and the application correspond, where a
710 comparison is required.

711 (b) If the election judges determine that the registration and voting certificate is
712 insufficient or that the signatures do not correspond, they shall:

713 (i) disallow the registration; and

714 (ii) without opening the ballot envelope, mark across the face of the envelope
715 "Rejected as defective because of _____ ." with the reason for the rejection placed in the
716 blank.

717 (c) When a military or overseas citizen voter's name is entered upon the registration
718 books, the voter is considered to be registered and the registration and voting certificate, signed
719 and sworn to by the military or overseas citizen voter on the back of the ballot envelope,
720 together with ~~his~~ the military or overseas citizen voter's name upon the registration books,
721 constitute ~~his~~ the military or overseas citizen voter's registration record.

722 (d) Nothing in this title may abridge the right of the military or overseas citizen voter to
723 be registered as provided in this section.

724 (3) (a) After registering the voter, the judges shall carefully open the ballot envelope so
725 as not to destroy the information printed on it if they find that:

726 (i) the registration and voting certificate is sufficient; and

727 (ii) the signatures on the certificate and the application correspond, where a
728 comparison is required.

729 (b) The election judges shall:

730 (i) remove the ballot from the envelope without unfolding it or permitting it to be
731 opened or examined;

732 (ii) initial the stub in the same manner as for other ballots;

733 (iii) deposit the ballot in the proper ballot box; and

734 (iv) mark the official register and pollbook to show that the voter has voted.

735 (c) If the election judges determine that the registration and voting certificate is
736 insufficient or that the signatures do not correspond, they shall:

737 (i) disallow the vote; and

738 (ii) without opening the ballot envelope, mark across the face of the envelope

739 "Rejected as defective because of _____ ." with the reason for the rejection placed in the
740 blank.

741 (4) The election judges shall deposit the envelope, when the ballot is voted, and the
742 envelope with its contents unopened, when the absent vote is rejected, in the ballot box
743 containing the ballots.

744 (5) The county clerk shall retain and preserve the envelopes in the manner provided by
745 law for the retention and preservation of official ballots voted at that election.

746 Section 12. Section **20A-8-401** is amended to read:

747 **20A-8-401. Registered political parties -- Bylaws.**

748 (1) (a) Each registered state political party shall file a copy of its constitution and
749 bylaws with the lieutenant governor by January 1, 1995.

750 (b) Each new or unregistered state political party that seeks to become a registered
751 political party under the authority of this chapter shall file a copy of its proposed constitution
752 and bylaws at the time it files its registration information.

753 (c) Each registered state political party shall file revised copies of its constitution or
754 bylaws with the lieutenant governor within 15 days after the constitution or bylaws are adopted
755 or amended.

756 (2) Each state political party, each new political party seeking registration, and each
757 unregistered political party seeking registration shall ensure that its constitution or bylaws
758 contain:

759 (a) provisions establishing party organization, structure, membership, and governance
760 that include:

761 (i) a description of the position, selection process, qualifications, duties, and terms of
762 each party officer and committees defined by constitution and bylaws;

763 (ii) a provision requiring a designated party officer to serve as liaison with the
764 lieutenant governor on all matters relating to the political party's relationship with the state;

765 (iii) a description of the requirements for participation in party processes;

766 (iv) the dates, times, and quorum of any regularly scheduled party meetings,
767 conventions, or other conclaves; and

768 (v) a mechanism for making the names of delegates, candidates, and elected party
769 officers available to the public shortly after they are selected;

- 770 (b) a procedure for selecting party officers that allows active participation by party
771 members;
- 772 (c) a procedure for selecting party candidates at the federal, state, and county levels that
773 allows active participation by party members;
- 774 (d) (i) a procedure for selecting electors who are pledged to cast their votes in the
775 electoral college for the party's candidates for President and Vice President of the United
776 States; and
- 777 (ii) a procedure for filling vacancies in the office of presidential elector because of
778 death, refusal to act, failure to attend, ineligibility, or any other cause;
- 779 (e) a procedure for filling vacancies in the office of representative or senator because of
780 death, resignation, or ineligibility;
- 781 (f) a provision requiring the governor and lieutenant governor to run as a joint ticket;
- 782 (g) a procedure for replacing party candidates who die, [~~become disabled~~] acquire a
783 disability, or are disqualified before a primary or regular general election;
- 784 (h) provisions governing the deposit and expenditure of party funds, and governing the
785 accounting for, reporting, and audit of party financial transactions;
- 786 (i) provisions governing access to party records;
- 787 (j) a procedure for amending the constitution or bylaws that allows active participation
788 by party members or their representatives;
- 789 (k) a process for resolving grievances against the political party; and
- 790 (l) if desired by the political party, a process for consulting with, and obtaining the
791 opinion of, the political party's Utah Senate and Utah House members about:
- 792 (i) the performance of the two United States Senators from Utah, including
793 specifically:
- 794 (A) their views and actions regarding the defense of state's rights and federalism; and
795 (B) their performance in representing Utah's interests;
- 796 (ii) the members' opinion about, or rating of, and support or opposition to the policy
797 positions of any candidates for United States Senate from Utah, including incumbents,
798 including specifically:
- 799 (A) their views and actions regarding the defense of state's rights and federalism; and
800 (B) their performance in representing Utah's interests; and

801 (iii) the members' collective or individual endorsement or rating of a particular
802 candidate for United States Senate from Utah.

803 Section 13. Section **23-19-1** is amended to read:

804 **23-19-1. Possession of licenses, certificates of registration, permits, and tags**
805 **required -- Nonassignability -- Exceptions -- Free fishing day.**

806 (1) A person may not engage in hunting, trapping, fishing, or seining protected wildlife
807 or in the sale, trade, or barter of protected wildlife or their parts without first having procured
808 the necessary licenses, certificates of registration, permits, and tags as provided under this
809 chapter and having at the same time the licenses, certificates of registration, permits, and tags
810 on his or her person, except as provided under Subsection (3).

811 (2) (a) Except as provided in Subsection (2)(b) a person may not:

812 (i) lend, transfer, sell, give, or assign licenses, certificates of registration, permits, or
813 tags belonging to the person or the rights granted by licenses, certificates of registration,
814 permits, or tags; or

815 (ii) use or attempt to use a license, certificate of registration, permit, or tag of another
816 person.

817 (b) The Wildlife Board may make exceptions to the prohibitions specified in
818 Subsection (2)(a) for purposes of:

819 (i) transporting wildlife;

820 (ii) taking protected wildlife for a person who has a permanent physical impairment
821 due to injury or disease, congenital or acquired, [~~which renders the person so severely disabled~~
822 ~~as to be~~] that results in the person having a disability that renders the person physically unable
823 to use a legal hunting weapon or fishing device; or

824 (iii) transferring a certificate of registration to harvest brine shrimp and brine shrimp
825 eggs to another person, if the certificate is transferred in connection with the sale or transfer of
826 the brine shrimp harvest operation or the harvesting equipment, subject to the restrictions
827 referred to under Subsection (2)(c).

828 (c) (i) A certificate of registration to harvest brine shrimp and brine shrimp eggs may
829 not be transferred without the approval of the division.

830 (ii) Application to allow the transfer of a certificate of registration to harvest brine
831 shrimp and brine shrimp eggs shall be made to the division on a form prescribed and furnished

832 by it.

833 (iii) The division may grant a transfer of a certificate of registration to harvest brine
834 shrimp and brine shrimp eggs if the proposed transferee meets all the requirements necessary to
835 obtain an original certificate of registration.

836 (3) No license, certificate of registration, permit, or tag is required to:

837 (a) fish on a free fishing day which the Wildlife Board may establish each year under
838 rules prescribed by the board;

839 (b) fish at a private fish pond operated in accordance with Section 23-15-10; or

840 (c) hunt birds on a commercial hunting area that the owner or operator is authorized to
841 propagate, keep, and release for shooting pursuant to a certificate of registration issued under
842 Section 23-17-6.

843 Section 14. Section **23-19-14** is amended to read:

844 **23-19-14. Persons residing in certain institutions authorized to fish without**
845 **license.**

846 (1) The Division of Wildlife Resources shall permit a person to fish without a license
847 if:

848 (a) (i) the person resides in:

849 (A) the Utah State Developmental Center in American Fork;

850 (B) the state hospital;

851 (C) a veteran's hospital;

852 (D) a veteran's nursing home;

853 (E) a mental health center;

854 (F) an intermediate care facility for [~~the mentally retarded~~] people with an intellectual
855 disability;

856 (G) a group home licensed by the Department of Human Services and operated under
857 contract with the Division of Services for People with Disabilities;

858 (H) a group home or other community-based placement licensed by the Department of
859 Human Services and operated under contract with the Division of Juvenile Justice Services;

860 (I) a private residential facility for at-risk youth licensed by the Department of Human
861 Services; or

862 (J) another similar institution approved by the division; or

863 (ii) the person is a youth who participates in a work camp operated by the Division of
864 Juvenile Justice Services;

865 (b) the person is properly supervised by a representative of the institution; and

866 (c) the institution obtains from the division a certificate of registration that specifies:

867 (i) the date and place where the person will fish; and

868 (ii) the name of the institution's representative who will supervise the person fishing.

869 (2) The institution must apply for the certificate of registration at least 10 days before
870 the fishing outing.

871 (3) (a) An institution that receives a certificate of registration authorizing at-risk youth
872 to fish shall provide instruction to the youth on fishing laws and regulations.

873 (b) The division shall provide educational materials to the institution to assist it in
874 complying with Subsection (3)(a).

875 Section 15. Section **23-19-36** is amended to read:

876 **23-19-36. Persons with a physical or intellectual disability, terminally ill persons,
877 and children in the custody of the state -- License to fish for free.**

878 (1) A resident who is blind, [~~paraplegic, or otherwise permanently disabled~~] has
879 paraplegia, or has another permanent disability so as to be permanently confined to a
880 wheelchair or the use of crutches, or who has lost either or both lower extremities, may receive
881 a free license to fish upon furnishing satisfactory proof of this fact to the Division of Wildlife
882 Resources.

883 (2) A resident who [~~is a mentally retarded person~~] has an intellectual disability and is
884 not eligible under Section 23-19-14 to fish without a license may receive a free license to fish
885 upon furnishing verification [~~of mental retardation, as defined in Section 62A-5-101,~~] from a
886 physician that the person has an intellectual disability.

887 (3) A resident who is terminally ill, and has less than five years to live, may receive a
888 free license to fish:

889 (a) upon furnishing verification from a physician; and

890 (b) if [~~he~~] the resident qualifies for assistance under any low income public assistance
891 program administered by a state agency.

892 (4) A child placed in the custody of the state by a court order may receive a free fishing
893 license upon furnishing verification of custody to the Division of Wildlife Resources.

894 Section 16. Section **23-19-38.3** is amended to read:

895 **23-19-38.3. Fishing licenses for disabled veterans -- Free or reduced price.**

896 (1) The division may make rules in accordance with Title 63G, Chapter 3, Utah
897 Administrative Rulemaking Act, under which a [~~disabled~~] veteran with a disability may receive
898 a fishing license free or at a reduced price.

899 (2) In making rules under this section, the division shall utilize the same guidelines for
900 disability as the United States Department of Veterans Affairs.

901 Section 17. Section **23-20-12** is amended to read:

902 **23-20-12. Airplanes or terrestrial or aquatic vehicles -- Use in taking wildlife**
903 **unlawful -- Exceptions.**

904 (1) It is unlawful for any person to take any wildlife from an airplane or any other
905 airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including
906 snowmobiles and other recreational vehicles, except as provided by this code or in the rules
907 and regulations of the Wildlife Board. [~~Provided, however, that an~~]

908 (2) Notwithstanding Subsection (1), an individual validly licensed to hunt [who is a
909 paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair
910 or the use of crutches,] may be authorized to hunt from a vehicle under terms and conditions
911 specified by the Wildlife Board[;] if the individual has:

912 (a) paraplegia; or

913 (b) a disability that permanently confines the individual to a wheelchair or the use of
914 crutches.

915 Section 18. Section **24-1-7** is amended to read:

916 **24-1-7. Hardship release of seized property.**

917 (1) After property is seized for forfeiture, a person or entity may not alienate, convey,
918 sequester, or attach that property until the court issues a final order of dismissal or an order of
919 forfeiture regarding the property.

920 (2) The seizing agency or the prosecuting attorney may authorize the release of
921 property seized for forfeiture to its owner if retention of actual custody is unnecessary.

922 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
923 discontinue forfeiture proceedings and transfer the action to another state or federal agency
924 which has initiated forfeiture proceedings involving the same property.

925 (4) Property seized for forfeiture is considered to be in the custody of the district court
926 and subject only to:

927 (a) the orders and decrees of the court having jurisdiction over the property or the
928 forfeiture proceedings; and

929 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

930 (5) (a) An owner of property seized pursuant to this chapter may obtain release of the
931 property by posting with the district court a surety bond or cash in an amount equal to the
932 current fair market value of the property as determined by the court or by the parties'
933 stipulation.

934 (b) The district court may refuse to order the release of the property if:

935 (i) the bond tendered is inadequate;

936 (ii) the property is contraband or is retained as evidence; or

937 (iii) the property is particularly altered or designed for use in conduct giving cause for
938 forfeiture.

939 (c) If a surety bond or cash is posted and the property seized and then released on a
940 bond or cash is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of
941 the property.

942 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30
943 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the
944 property seized.

945 (b) The seizing agency shall deposit property that is in the form of cash or other readily
946 negotiable instruments into a restricted account maintained by the agency solely for the purpose
947 of managing and protecting the property from commingling, loss, or devaluation during the
948 pendency of the forfeiture proceedings.

949 (c) The seizing agency shall have in place written policy for the identification, tracking,
950 management, and safekeeping of seized property, which shall include a prohibition against the
951 transfer, sale, or auction of forfeited property to any employee of the seizing agency.

952 (d) An agency may not be awarded any funds from forfeiture through the Crime
953 Reduction Assistance Program under Section 24-1-19 if the agency has not established or
954 maintained the inventory policy, restricted account, and written policies required by this
955 Subsection (6).

956 (7) An owner is entitled to the immediate release of seized property from the seizing
957 agency pending the final determination of forfeiture if:

958 (a) the owner had a possessory interest in the property at the time of seizure;
959 (b) continued possession by the agency or the state pending the final disposition of the

960 forfeiture proceedings will cause substantial hardship to the owner, such as:

961 (i) preventing the functioning of a legitimate business;

962 (ii) preventing any individual from working;

963 (iii) preventing any minor child or student from attending school;

964 (iv) preventing or hindering any person from receiving necessary medical care;

965 (v) hindering the care of:

966 (A) an elderly [~~or disabled~~] dependent adult;

967 (B) a dependent child [~~or adult~~] with a disability; or

968 (C) a dependent adult with a disability;

969 (vi) preventing an owner from retaining counsel to provide a defense in the forfeiture
970 proceeding; or

971 (vii) leaving any individual homeless, or any other condition that the court determines
972 causes a substantial hardship;

973 (c) the hardship from the continued possession by the agency of the seized property
974 outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred
975 if it is returned to the owner during the pendency of the proceeding; and

976 (d) determination of substantial hardship under this Subsection (7) is based upon the
977 property's use prior to the seizure.

978 (8) The right to appointed counsel under Section 24-1-9 applies throughout civil
979 forfeiture proceedings, including an owner's motion for hardship release.

980 (9) An owner may file a motion for hardship release:

981 (a) in the court in which forfeiture proceedings have commenced; or

982 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
983 have not yet commenced.

984 (10) The motion for hardship release shall also be served upon the prosecuting attorney
985 or the seizing agency within 10 days after filing the motion.

986 (11) The court shall render a decision on a motion for hardship filed under this section

987 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
988 attorney or seizing agency, whichever is earlier, unless this period is extended by the parties or
989 by the court for good cause shown.

990 (12) (a) If the owner demonstrates substantial hardship pursuant to this section, the
991 court shall order the property immediately released to the owner pending completion of
992 proceedings by the government to obtain forfeiture of the property.

993 (b) The court may place conditions on release of the property as it finds necessary and
994 appropriate to preserve the availability of the property or its equivalent for forfeiture.

995 (13) The hardship release does not apply if the seized property is:

996 (a) contraband;

997 (b) currency or other monetary instrument or electronic funds, unless the property is
998 used to pay for the reasonable costs of defending against the forfeiture proceeding or
999 constitutes the assets of a legitimate business; or

1000 (c) likely to be used to commit additional illegal acts if returned to the owner.

1001 (14) (a) The court may order property which has been seized for forfeiture to be sold as
1002 allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any
1003 owner or interest holder, or to preserve the interests of any party on motion of that party.

1004 (b) The court may enter orders under Subsection (14)(a) after notice to persons known
1005 to have an interest in the property, and after an opportunity for a hearing.

1006 (15) (a) A sale may be ordered under Subsection (14) when the property is liable to
1007 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
1008 property are disproportionate to its value.

1009 (b) A third party designated by the court shall dispose of the property by commercially
1010 reasonable public sale and distribute the proceeds in the following order of priority:

1011 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

1012 (ii) second, for the satisfaction of any interests, including those of interest holders, in
1013 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

1014 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
1015 custody of the court, in an interest-bearing account, subject to further proceedings under this
1016 chapter.

1017 Section 19. Section **26-1-18** is amended to read:

1018 **26-1-18. Authority of department generally.**

1019 The department is the health, health planning, and medical assistance authority of the
1020 state and is the sole state agency for administration of federally assisted state programs or plans
1021 for public health, health planning, maternal and child health, ~~[crippled children's services]~~
1022 services for children with a disability, and medical assistance.

1023 Section 20. Section ~~26-2-27~~ is amended to read:

1024 **26-2-27. Identifying birth certificates of missing persons -- Procedures.**

1025 (1) As used in this section:

1026 (a) "Division" means the Criminal Investigations and Technical Services Division,
1027 Department of Public Safety, in Title 53, Chapter 10, Criminal Investigation and Technical
1028 Services Act.

1029 (b) "Missing child" means a person younger than 18 years of age who is missing from
1030 ~~[his]~~ the person's home environment or a temporary placement facility for any reason, and
1031 whose whereabouts cannot be determined by the person responsible for the child's care.

1032 (c) "Missing person" means a person who:

1033 (i) is missing from ~~[his]~~ the person's home environment; and ~~[is: (i) physically or~~
1034 ~~mentally disabled;]~~

1035 (ii) (A) has a physical or mental disability;

1036 ~~[(ii)]~~ (B) is missing under circumstances that indicate that [they are] the person is
1037 endangered, missing involuntarily, or a victim of a catastrophe; or

1038 ~~[(iii)]~~ (C) is a missing child.

1039 (2) (a) In accordance with Section 53-10-203, upon the state registrar's notification by
1040 the division that a person who was born in this state is missing, the state and local registrars
1041 shall flag the registered birth certificate of that person so that when a copy of the registered
1042 birth certificate or information regarding the birth record is requested, the state and local
1043 registrars are alerted to the fact the registered birth certificate is that of a missing person.

1044 (b) Upon notification by the division the missing person has been recovered, the state
1045 and local registrars shall remove the flag from that person's registered birth certificate.

1046 (3) The state and local registrars may not provide a copy of a registered birth certificate
1047 of any person whose record is flagged under Subsection (2), except as approved by the
1048 division.

1049 (4) (a) When a copy of the registered birth certificate of a person whose record has
1050 been flagged is requested in person, the state or local registrar shall require that person to
1051 complete a form supplying [his] that person's name, address, telephone number, and
1052 relationship to the missing person, and the name and birth date of the missing person.

1053 (b) The state or local registrar shall inform the requester that a copy of the registered
1054 birth certificate will be mailed to [~~him~~] the requester.

1055 (c) The state or local registrar shall note the physical description of the person making
1056 the request, and shall immediately notify the division of the request and the information
1057 obtained pursuant to this Subsection (4).

1058 (5) When a copy of the registered birth certificate of a person whose record has been
1059 flagged is requested in writing, the state or local registrar or [~~his~~] personnel of the state or local
1060 registrar shall immediately notify the division, and provide it with a copy of the written request.

1061 Section 21. Section **26-4-7** is amended to read:

1062 **26-4-7. Custody by medical examiner.**

1063 Upon notification under Section 26-4-8 or investigation by the medical examiner's
1064 office, the medical examiner shall assume custody of a deceased body if it appears that death
1065 was:

1066 (1) by violence, gunshot, suicide, or accident unless the accident is a highway accident.

1067 If the death was from a highway accident, custody shall only be assumed if an autopsy is
1068 required or permitted under the provisions of Section 26-4-13 or if requested by the law
1069 enforcement agency with jurisdiction over the highway accident;

1070 (2) sudden death while in apparent good health;

1071 (3) unattended deaths, except that an autopsy may only be performed in accordance
1072 with the provisions of Subsection 26-4-9(3);

1073 (4) under suspicious or unusual circumstances;

1074 (5) resulting from poisoning or overdose of drugs;

1075 (6) resulting from diseases that may constitute a threat to the public health;

1076 (7) resulting from disease, injury, toxic effect, or unusual exertion incurred within the
1077 scope of the decedent's employment;

1078 (8) due to sudden infant death syndrome;

1079 (9) resulting while the decedent was in prison, jail, police custody, the state hospital, or

1080 in a detention or medical facility operated for the treatment of [~~the mentally ill,~~] persons with a
1081 mental illness, persons who are emotionally disturbed, or delinquent persons;

1082 (10) associated with diagnostic or therapeutic procedures; or

1083 (11) described in this section when request is made to assume custody by a county or
1084 district attorney or law enforcement agency in connection with a potential homicide
1085 investigation or prosecution.

1086 Section 22. Section **26-10-1** is amended to read:

1087 **26-10-1. Definitions.**

1088 As used in this chapter:

1089 (1) "Maternal and child health services" means:

1090 (a) the provision of educational, preventative, diagnostic, and treatment services,
1091 including medical care, hospitalization, and other institutional care and aftercare, appliances,
1092 and facilitating services directed toward reducing infant mortality and improving the health of
1093 mothers and children provided, however, that nothing in this section shall be construed to
1094 allow any agency of the state to interfere with the rights of the parent of an unmarried minor in
1095 decisions about the providing of health information or services;

1096 (b) the development, strengthening, and improvement of standards and techniques
1097 relating to the services and care;

1098 (c) the training of personnel engaged in the provision, development, strengthening, or
1099 improvement of the services and care; and

1100 (d) necessary administrative services connected with Subsections (1)(a), (b), and (c).

1101 (2) [~~"Crippled children's services"~~] "Services for children with a disability" means:

1102 (a) the early location of [~~crippled~~] children with a disability, provided that any program
1103 of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an
1104 unborn child will not be used for screening, but rather will be utilized only when there are
1105 medical or genetic indications that warrant diagnosis;

1106 (b) the provision for [~~such~~] children described in Subsection (2)(a) of preventive,
1107 diagnosis, and treatment services, including medical care, hospitalization, and other
1108 institutional care and aftercare, appliances, and facilitating services directed toward the
1109 diagnosis of the condition of [~~such~~] those children or toward the restoration of the children to
1110 maximum physical and mental health;

1111 (c) the development, strengthening, and improvement of standards and techniques
1112 relating to such services and care;

1113 (d) the training of personnel engaged in the provision, development, strengthening, or
1114 improvement of such services and care; and

1115 (e) necessary administrative services connected with Subsections (2)(a), (b), and (c).

1116 Section 23. Section **26-10-2** is amended to read:

1117 **26-10-2. Maternal and child health services -- Services for children with a**
1118 **disability.**

1119 The department shall provide for maternal and child health services and [~~crippled~~
1120 ~~children's~~] services for children with a disability to individuals who need [~~such~~] these services
1121 and cannot reasonably obtain them from other sources.

1122 Section 24. Section **26-10-6** is amended to read:

1123 **26-10-6. Testing of newborn infants.**

1124 (1) Except in the case where parents object on the grounds that they are members of a
1125 specified, well-recognized religious organization whose teachings are contrary to the tests
1126 required by this section, each newborn infant shall be tested for:

1127 (a) phenylketonuria (PKU);

1128 (b) other metabolic diseases which may result in [~~mental retardation~~] an intellectual
1129 disability or brain damage and for which:

1130 (i) a preventive measure or treatment is available; and

1131 (ii) there exists a reliable laboratory diagnostic test method; and

1132 (c) (i) beginning July 1, 1998, for an infant born in a hospital with 100 or more live
1133 births annually, hearing loss; and

1134 (ii) beginning July 1, 1999, for an infant born in a setting other than a hospital with 100
1135 or more live births annually, hearing loss.

1136 (2) In accordance with Section 26-1-6, the department may charge fees for:

1137 (a) materials supplied by the department to conduct tests required under Subsection (1);

1138 (b) tests required under Subsection (1) conducted by the department;

1139 (c) laboratory analyses by the department of tests conducted under Subsection (1); and

1140 (d) the administrative cost of follow-up contacts with the parents or guardians of tested
1141 infants.

1142 (3) Tests for hearing loss under Subsection (1) shall be based on one or more methods
1143 approved by the Newborn Hearing Screening Committee, including:

- 1144 (a) auditory brainstem response;
- 1145 (b) automated auditory brainstem response; and
- 1146 (c) evoked otoacoustic emissions.

1147 (4) Results of tests for hearing loss under Subsection (1) shall be reported to:

- 1148 (a) parents when results of tests for hearing loss under Subsection (1) suggest that
1149 additional diagnostic procedures or medical interventions are necessary; and
- 1150 (b) the department.

1151 (5) (a) There is established the Newborn Hearing Screening Committee.

1152 (b) The committee shall advise the department on:

- 1153 (i) the validity and cost of newborn infant hearing loss testing procedures; and
- 1154 (ii) rules promulgated by the department to implement this section.

1155 (c) The committee shall be composed of at least 11 members appointed by the
1156 executive director, including:

- 1157 (i) one representative of the health insurance industry;
- 1158 (ii) one pediatrician;
- 1159 (iii) one family practitioner;
- 1160 (iv) one ear, nose, and throat specialist nominated by the Utah Medical Association;
- 1161 (v) two audiologists nominated by the Utah Speech-Language-Hearing Association;
- 1162 (vi) one representative of hospital neonatal nurseries;
- 1163 (vii) one representative of the Early Intervention Baby Watch Program administered by
1164 the department;
- 1165 (viii) one public health nurse;
- 1166 (ix) one consumer; and
- 1167 (x) the executive director or his designee.

1168 (d) Of the initial members of the committee, the executive director shall appoint as
1169 nearly as possible half to two-year terms and half to four-year terms. Thereafter, appointments
1170 shall be for four-year terms except:

- 1171 (i) for those members who have been appointed to complete an unexpired term; and
- 1172 (ii) as necessary to ensure that as nearly as possible the terms of half the appointments

1173 expire every two years.

1174 (e) A majority of the members constitute a quorum and a vote of the majority of the
1175 members present constitutes an action of the committee.

1176 (f) The committee shall appoint a chairman from its membership.

1177 (g) The committee shall meet at least quarterly.

1178 (h) A member may not receive compensation or benefits for the member's service, but
1179 may receive per diem and travel expenses in accordance with:

1180 (i) Section 63A-3-106;

1181 (ii) Section 63A-3-107; and

1182 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1183 63A-3-107.

1184 (i) The department shall provide staff for the committee.

1185 Section 25. Section **26-18-3** is amended to read:

1186 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
1187 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
1188 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

1189 (1) The department shall be the single state agency responsible for the administration
1190 of the Medicaid program in connection with the United States Department of Health and
1191 Human Services pursuant to Title XIX of the Social Security Act.

1192 (2) (a) The department shall implement the Medicaid program through administrative
1193 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
1194 Act, the requirements of Title XIX, and applicable federal regulations.

1195 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
1196 necessary to implement the program:

1197 (i) the standards used by the department for determining eligibility for Medicaid
1198 services;

1199 (ii) the services and benefits to be covered by the Medicaid program; and

1200 (iii) reimbursement methodologies for providers under the Medicaid program.

1201 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
1202 and Human Services Appropriations Subcommittee when the department:

1203 (i) implements a change in the Medicaid State Plan;

- 1204 (ii) initiates a new Medicaid waiver;
- 1205 (iii) initiates an amendment to an existing Medicaid waiver;
- 1206 (iv) applies for an extension of an application for a waiver or an existing Medicaid
1207 waiver; or
- 1208 (v) initiates a rate change that requires public notice under state or federal law.
- 1209 (b) The report required by Subsection (3)(a) shall:
- 1210 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
1211 to the department implementing the proposed change; and
- 1212 (ii) include:
- 1213 (A) a description of the department's current practice or policy that the department is
1214 proposing to change;
- 1215 (B) an explanation of why the department is proposing the change;
- 1216 (C) the proposed change in services or reimbursement, including a description of the
1217 effect of the change;
- 1218 (D) the effect of an increase or decrease in services or benefits on individuals and
1219 families;
- 1220 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
1221 services in health or human service programs; and
- 1222 (F) the fiscal impact of the proposed change, including:
- 1223 (I) the effect of the proposed change on current or future appropriations from the
1224 Legislature to the department;
- 1225 (II) the effect the proposed change may have on federal matching dollars received by
1226 the state Medicaid program;
- 1227 (III) any cost shifting or cost savings within the department's budget that may result
1228 from the proposed change; and
- 1229 (IV) identification of the funds that will be used for the proposed change, including any
1230 transfer of funds within the department's budget.
- 1231 (4) (a) The Department of Human Services shall report to the Legislative Health and
1232 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
1233 with Subsection (4)(b).
- 1234 (b) The report required by Subsection (4)(a) shall include:

1235 (i) changes made by the division or the department beginning July 1, 2010 that effect
1236 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
1237 services or funding, that relate to care for children and youth in the custody of the Division of
1238 Child and Family Services or the Division of Juvenile Justice Services;

1239 (ii) the history and impact of the changes under Subsection (4)(b)(i);

1240 (iii) the Department of Human Service's plans for addressing the impact of the changes
1241 under Subsection (4)(b)(i); and

1242 (iv) ways to consolidate administrative functions within the Department of Human
1243 Services, the Department of Health, the Division of Child and Family Services, and the
1244 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
1245 with mental health and substance disorder treatment needs.

1246 (5) Any rules adopted by the department under Subsection (2) are subject to review and
1247 reauthorization by the Legislature in accordance with Section 63G-3-502.

1248 (6) The department may, in its discretion, contract with the Department of Human
1249 Services or other qualified agencies for services in connection with the administration of the
1250 Medicaid program, including:

1251 (a) the determination of the eligibility of individuals for the program;

1252 (b) recovery of overpayments; and

1253 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
1254 control services, enforcement of fraud and abuse laws.

1255 (7) The department shall provide, by rule, disciplinary measures and sanctions for
1256 Medicaid providers who fail to comply with the rules and procedures of the program, provided
1257 that sanctions imposed administratively may not extend beyond:

1258 (a) termination from the program;

1259 (b) recovery of claim reimbursements incorrectly paid; and

1260 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

1261 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
1262 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
1263 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
1264 the federal Social Security Act.

1265 (9) (a) In determining whether an applicant or recipient is eligible for a service or

1266 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
1267 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle
1268 designated by the applicant or recipient.

1269 (b) Before Subsection (9)(a) may be applied:

1270 (i) the federal government must:

1271 (A) determine that Subsection (9)(a) may be implemented within the state's existing
1272 public assistance-related waivers as of January 1, 1999;

1273 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

1274 (C) determine that the state's waivers that permit dual eligibility determinations for
1275 cash assistance and Medicaid are no longer valid; and

1276 (ii) the department must determine that Subsection (9)(a) can be implemented within
1277 existing funding.

1278 (10) (a) For purposes of this Subsection (10):

1279 (i) "aged, blind, or [~~disabled~~ shall be defined by administrative rule] has a disability"
1280 means an aged, blind, or disabled individual, as defined in 42 U.S.C. 1382c(a)(1); and

1281 (ii) "spend down" means an amount of income in excess of the allowable income
1282 standard that must be paid in cash to the department or incurred through the medical services
1283 not paid by Medicaid.

1284 (b) In determining whether an applicant or recipient who is aged, blind, or [~~disabled~~]
1285 has a disability is eligible for a service or benefit under this chapter, the department shall use
1286 100% of the federal poverty level as:

1287 (i) the allowable income standard for eligibility for services or benefits; and

1288 (ii) the allowable income standard for eligibility as a result of spend down.

1289 (11) The department shall conduct internal audits of the Medicaid program, in
1290 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

1291 (12) In order to determine the feasibility of contracting for direct Medicaid providers
1292 for primary care services, the department shall:

1293 (a) issue a request for information for direct contracting for primary services that shall
1294 provide that a provider shall exclusively serve all Medicaid clients:

1295 (i) in a geographic area;

1296 (ii) for a defined range of primary care services; and

1297 (iii) for a predetermined total contracted amount; and
1298 (b) by February 1, 2011, report to the Health and Human Services Appropriations
1299 Subcommittee on the response to the request for information under Subsection (12)(a).
1300 (13) (a) By December 31, 2010, the department shall:
1301 (i) determine the feasibility of implementing a three year patient-centered medical
1302 home demonstration project in an area of the state using existing budget funds; and
1303 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
1304 to the Health and Human Services Appropriations Subcommittee.
1305 (b) If the department determines that the medical home demonstration project
1306 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
1307 Subcommittee recommends that the demonstration project be implemented, the department
1308 shall:
1309 (i) implement the demonstration project; and
1310 (ii) by December 1, 2012, make recommendations to the Health and Human Services
1311 Appropriations Subcommittee regarding the:
1312 (A) continuation of the demonstration project;
1313 (B) expansion of the demonstration project to other areas of the state; and
1314 (C) cost savings incurred by the implementation of the demonstration project.
1315 (14) (a) The department may apply for and, if approved, implement a demonstration
1316 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
1317 (b) A health opportunity account established under Subsection (14)(a) shall be an
1318 alternative to the existing benefits received by an individual eligible to receive Medicaid under
1319 this chapter.
1320 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.
1321 Section 26. Section **26-18-3.1** is amended to read:
1322 **26-18-3.1. Medicaid expansion.**
1323 (1) The purpose of this section is to expand the coverage of the Medicaid program to
1324 persons who are in categories traditionally not served by that program.
1325 (2) Within appropriations from the Legislature, the department may amend the state
1326 plan for medical assistance to provide for eligibility for Medicaid:
1327 (a) on or after July 1, 1994, for children 12 to 17 years old who live in households

1328 below the federal poverty income guideline; and

1329 (b) on or after July 1, 1995, for persons who have incomes below the federal poverty
1330 income guideline and who are aged, blind, or [~~disabled~~] have a disability.

1331 (3) (a) Within appropriations from the Legislature, on or after July 1, 1996, the
1332 Medicaid program may provide for eligibility for persons who have incomes below the federal
1333 poverty income guideline.

1334 (b) In order to meet the provisions of this subsection, the department may seek
1335 approval for a demonstration project under 42 U.S.C. Section 1315 from the secretary of the
1336 United States Department of Health and Human Services. This demonstration project may also
1337 provide for the voluntary participation of private firms that:

1338 (i) are newly established or marginally profitable;

1339 (ii) do not provide health insurance to their employees;

1340 (iii) employ predominantly low wage workers; and

1341 (iv) are unable to obtain adequate and affordable health care insurance in the private
1342 market.

1343 (4) Services available for persons described in this section shall include required
1344 Medicaid services and may include one or more optional Medicaid services if those services
1345 are funded by the Legislature. The department may also require persons described in this
1346 section to meet an asset test.

1347 Section 27. Section **26-18-501** is amended to read:

1348 **26-18-501. Definitions.**

1349 As used in this part:

1350 (1) "Certified program" means a nursing care facility program with Medicaid
1351 certification.

1352 (2) "Director" means the director of the Division of Health Care Financing.

1353 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider
1354 of a nursing care facility program as established by division rule.

1355 (4) (a) "Nursing care facility" means the following facilities licensed by the department
1356 under Chapter 21, Health Care Facility Licensing and Inspection Act:

1357 (i) skilled nursing homes;

1358 (ii) intermediate care facilities; and

1359 (iii) an intermediate care [~~facilities for the mentally retarded~~] facility for people with an
1360 intellectual disability.

1361 (b) "Nursing care facility" does not mean a critical access hospital that meets the
1362 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

1363 (5) "Nursing care facility program" means the personnel, licenses, services, contracts
1364 and all other requirements that must be met for a nursing care facility to be eligible for
1365 Medicaid certification under this part and division rule.

1366 (6) "Physical facility" means the buildings or other physical structures where a nursing
1367 care facility program is operated.

1368 (7) "Service area" means the boundaries of the distinct geographic area served by a
1369 certified program as determined by the division in accordance with this part and division rule.

1370 Section 28. Section **26-19-13.5** is amended to read:

1371 **26-19-13.5. Estate and trust recovery.**

1372 (1) Upon a recipient's death, the department may recover from the recipient's estate and
1373 any trust, in which the recipient is the grantor and a beneficiary, medical assistance correctly
1374 provided for the benefit of the recipient when [~~he~~] the recipient was 55 years of age or older if,
1375 at the time of death, the recipient has no:

1376 (a) surviving spouse; or

1377 (b) child:

1378 (i) younger than 21 years of age; or

1379 (ii) who is blind or [~~permanently and totally disabled~~] has a permanent and total
1380 disability.

1381 (2) (a) The amount of medial assistance correctly provided for the benefit of a recipient
1382 and recoverable under this section is a lien against the estate of the deceased recipient or any
1383 trust when the recipient is the grantor and a beneficiary.

1384 (b) The lien holds the same priority as reasonable and necessary medical expenses of
1385 the last illness as provided in Section 75-3-805.

1386 (3) (a) The department shall perfect the lien by filing a notice in the court of
1387 appropriate jurisdiction for the amount of the lien, in the same manner as a creditor's claim is
1388 filed, prior to final distribution.

1389 (b) The department may file an amended lien prior to the entry of the final order

1390 closing the estate.

1391 (4) Claims against a deceased recipient's inter vivos trust shall be presented in
1392 accordance with Sections 75-7-509 and 75-7-510.

1393 (5) Any trust provision that denies recovery for medical assistance is void at the time of
1394 its making.

1395 (6) Nothing in this section affects the right of the department to recover Medicaid
1396 assistance before a recipient's death under Section 26-19-4.5 or Section 26-19-13.7.

1397 Section 29. Section **26-21-3** is amended to read:

1398 **26-21-3. Health Facility Committee -- Members -- Terms -- Organization --**
1399 **Meetings.**

1400 (1) The Health Facility Committee created by Section 26-1-7 consists of 15 members
1401 appointed by the governor with the consent of the Senate. The appointed members shall be
1402 knowledgeable about health care facilities and issues. The membership of the committee is:

1403 (a) one physician, licensed to practice medicine and surgery under Title 58, Chapter 67,
1404 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act,
1405 who is a graduate of a regularly chartered medical school;

1406 (b) one hospital administrator;

1407 (c) one hospital trustee;

1408 (d) one representative of a freestanding ambulatory surgical facility;

1409 (e) one representative of an ambulatory surgical facility that is affiliated with a
1410 hospital;

1411 (f) two representatives of the nursing care facility industry;

1412 (g) one registered nurse, licensed to practice under Title 58, Chapter 31b, Nurse
1413 Practice Act;

1414 (h) one professional in the field of [~~mental retardation~~] intellectual disabilities not
1415 affiliated with a nursing care facility;

1416 (i) one licensed architect or engineer with expertise in health care facilities;

1417 (j) two representatives of assisted living facilities licensed under this chapter;

1418 (k) two consumers, one of whom has an interest in or expertise in geriatric care; and

1419 (l) one representative from either a home health care provider or a hospice provider.

1420 (2) (a) Except as required by Subsection (2)(b), members shall be appointed for a term

1421 of four years.

1422 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
1423 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1424 committee members are staggered so that approximately half of the committee is appointed
1425 every two years.

1426 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
1427 appointed for the unexpired term by the governor, giving consideration to recommendations
1428 made by the committee, with the consent of the Senate.

1429 (d) A member may not serve more than two consecutive full terms or 10 consecutive
1430 years, whichever is less. However, a member may continue to serve as a member until he is
1431 replaced.

1432 (e) The committee shall annually elect from its membership a chair and vice chair.

1433 (f) The committee shall meet at least quarterly, or more frequently as determined by the
1434 chair or five members of the committee.

1435 (g) Eight members constitute a quorum. A vote of the majority of the members present
1436 constitutes action of the committee.

1437 Section 30. Section **26-21-9.5** is amended to read:

1438 **26-21-9.5. Criminal background check and Licensing Information System check.**

1439 (1) For purposes of this section:

1440 (a) "Covered employer" means an individual who:

1441 (i) is not a covered health care facility;

1442 (ii) is not a licensed business within the state; and

1443 (iii) is hiring an individual to provide services to an elderly ~~[or disabled]~~ person or a
1444 person with a disability in the person's home ~~[of the elderly or disabled person].~~

1445 (b) "Covered health care facility" means:

1446 (i) home health care agencies;

1447 (ii) hospices;

1448 (iii) nursing care facilities;

1449 (iv) assisted-living facilities;

1450 (v) small health care facilities; and

1451 (vi) end stage renal disease facilities.

1452 (c) "Covered person" includes:
1453 (i) the following people who provide direct patient care:
1454 (A) employees;
1455 (B) volunteers; and
1456 (C) people under contract with the covered health care facility; and
1457 (ii) for residential settings, any individual residing in the home where the assisted
1458 living or small health care program is to be licensed who:
1459 (A) is 18 years of age or older; or
1460 (B) is a child between the age of 12 and 17 years of age[~~; however, the identifying~~
1461 ~~information required for a child between the age of 12 and 17 does not include fingerprints~~].
1462 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
1463 covered health care facility at the time of initial application for a license and license renewal
1464 shall:
1465 (a) submit the name and other identifying information of each covered person at the
1466 covered facility who:
1467 (i) provides direct care to a patient; and
1468 (ii) has been the subject of a criminal background check within the preceding
1469 three-year period by a public or private entity recognized by the department; and
1470 (b) submit the name and other identifying information, which, except as provided in
1471 Subsection (3)(c), may include fingerprints, of each covered person at the covered facility who
1472 has not been the subject of a criminal background check in accordance with Subsection
1473 (2)(a)(ii).
1474 (3) (a) The department shall forward the information received under Subsection (2)(b)
1475 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
1476 Public Safety for processing to determine whether the individual has been convicted of any
1477 crime.
1478 (b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not
1479 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
1480 national criminal history record check. The fingerprints shall be submitted to the FBI through
1481 the Criminal Investigations and Technical Services Division. The individual or licensee is
1482 responsible for the cost of the fingerprinting and national criminal history check.

1483 (c) Identifying information required under this section for a covered person who is
1484 between the age of 12 and 17 does not include fingerprints.

1485 (4) The department may determine whether:

1486 (a) an individual whose name and other identifying information has been submitted
1487 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
1488 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
1489 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
1490 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
1491 individual;

1492 (b) an individual whose name and other identifying information has been submitted
1493 pursuant to Subsection (2) or (6)(b) and who provides direct care to [~~disabled or elder adults~~
1494 an elderly person or an adult with a disability, or who is residing in a residential home that is a
1495 facility licensed to provide direct care to [~~disabled or elder adults~~ an elderly person or an adult
1496 with a disability, has a substantiated finding of abuse, neglect, or exploitation of [~~a disabled or~~
1497 ~~elder adult~~ an elderly person or an adult with a disability by accessing in accordance with
1498 Subsection (5) the database created in Section 62A-3-311.1 if identification as a possible
1499 perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the
1500 employment activities or residence of that person; or

1501 (c) an individual whose name or other identifying information has been submitted
1502 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an
1503 act which if committed by an adult would be a felony or a misdemeanor if:

1504 (i) the individual is under the age of 28 years; or

1505 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
1506 or is currently subject to a plea in abeyance or diversion agreement for any felony or
1507 misdemeanor.

1508 (5) (a) The department shall:

1509 (i) designate persons within the department to access:

1510 (A) the Licensing Information System described in Section 62A-4a-1006;

1511 (B) court records under Subsection 78A-6-323(6);

1512 (C) the database described in Subsection (4)(b); and

1513 (D) juvenile court records as permitted by Subsection (4)(c); and

- 1514 (ii) adopt measures to:
- 1515 (A) protect the security of the Licensing Information System, the court records, and the
1516 database; and
- 1517 (B) strictly limit access to the Licensing Information System, the court records, and the
1518 database to those designated under Subsection (5)(a)(i).
- 1519 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
1520 Department of Human Services with respect to:
- 1521 (i) accessing the Licensing Information System, the court records, and the database;
- 1522 (ii) maintaining strict security; and
- 1523 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
1524 information.
- 1525 (c) Those designated under Subsection (5)(a)(i):
- 1526 (i) are the only ones in the department with the authority to access the Licensing
1527 Information System, the court records, and database; and
- 1528 (ii) may only access the Licensing Information System, the court records, and the
1529 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
- 1530 (6) (a) Within 10 days of initially hiring a covered individual, a covered health care
1531 facility shall submit the covered individual's information to the department in accordance with
1532 Subsection (2).
- 1533 (b) (i) ~~Prior to~~ Before, or within 10 days of initially hiring an individual to provide
1534 care to an elderly ~~adult~~ person or a ~~disabled person~~ person with a disability in the home of
1535 the ~~elderly adult or disabled~~ person, a covered employer may submit the employed
1536 individual's information to the department.
- 1537 (ii) The department shall:
- 1538 (A) in accordance with Subsections (4) and (6)(c) ~~[of this section]~~, and Subsection
1539 62A-3-311.1~~(4)~~ (2)(b), determine whether the individual has a substantiated finding of abuse,
1540 neglect, or exploitation of a minor or an elderly ~~adult~~ person; and
- 1541 (B) in accordance with Subsection (9), inform the covered employer of the
1542 department's findings.
- 1543 (c) A covered employer:
- 1544 (i) must certify to the department that the covered employer intends to hire, or has

1545 hired, the individual whose information the covered employer has submitted to the department
1546 for the purpose of providing care to an elderly [~~adult or a disabled~~] person or a person with a
1547 disability in the home of the [~~elderly adult or disabled~~] person;

1548 (ii) must pay the reasonable fees established by the department under Subsection (8);
1549 and

1550 (iii) commits an infraction if the covered employer intentionally misrepresents any fact
1551 certified under Subsection (6)(c)(i).

1552 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
1553 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
1554 who has been convicted of a criminal offense, or a person described in Subsection (4), may
1555 provide direct care to a patient in a covered health care facility, taking into account the nature
1556 of the criminal conviction or substantiated finding and its relation to patient care.

1557 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
1558 a criminal background check processed pursuant to this section.

1559 (9) The department may inform the covered health care facility or a covered employer
1560 of information discovered under Subsection (4) with respect to a covered individual, or an
1561 individual whose name is submitted by a covered employer.

1562 (10) (a) A covered health care facility is not civilly liable for submitting information to
1563 the department as required by this section.

1564 (b) A covered employer is not civilly liable for submitting information to the
1565 department as permitted by this section if the covered employer:

1566 (i) complies with Subsection (6)(c)(i); and

1567 (ii) does not use the information obtained about an individual under this section for any
1568 purpose other than hiring decisions directly related to the care of the elderly [~~adult or disabled~~]
1569 person or the person with a disability.

1570 Section 31. Section ~~26-21-13.5~~ is amended to read:

1571 **26-21-13.5. Intermediate care facilities for people with an intellectual disability --**
1572 **Licensing.**

1573 (1) (a) It is the Legislature's intent that [~~developmentally disabled persons~~] a person
1574 with a developmental disability be provided with an environment and surrounding that, as
1575 closely as possible, resembles small community-based, homelike settings, to allow those

1576 persons to have the opportunity, to the maximum extent feasible, to exercise their full rights
1577 and responsibilities as citizens.

1578 (b) It is the Legislature's purpose, in enacting this section, to provide assistance and
1579 opportunities to enable ~~[persons]~~ a person with a developmental ~~[disabilities]~~ disability to
1580 achieve ~~[their]~~ the person's maximum potential through increased independence, productivity,
1581 and integration into the community.

1582 (2) After July 1, 1990, the department may only license intermediate care beds for ~~[the~~
1583 ~~mentally-retarded]~~ people with an intellectual disability in small health care facilities.

1584 (3) The department may define by rule "small health care facility" for purposes of
1585 licensure under this section and adopt rules necessary to carry out the requirements and
1586 purposes of this section.

1587 (4) This section does not apply to the renewal of a license or the licensure to a new
1588 owner of any facility that was licensed on or before July 1, 1990, and that licensure has been
1589 maintained without interruption.

1590 Section 32. Section **26-35a-102** is amended to read:

1591 **26-35a-102. Legislative findings.**

1592 (1) The Legislature finds that there is an important state purpose to improve the quality
1593 of care given to ~~[the elderly and the physically disabled]~~ persons who are elderly and to people
1594 who have a disability, in long-term care nursing facilities.

1595 (2) The Legislature finds that in order to improve the quality of care to those persons
1596 described in Subsection (1), the rates paid to the nursing care facilities by the Medicaid
1597 program must be adequate to encourage and support quality care.

1598 (3) The Legislature finds that in order to meet the objectives in Subsections (1) and (2),
1599 adequate funding must be provided to increase the rates paid to nursing care facilities providing
1600 services pursuant to the Medicaid program.

1601 Section 33. Section **26-35a-103** is amended to read:

1602 **26-35a-103. Definitions.**

1603 As used in this chapter:

1604 (1) (a) "Nursing care facility" means:

1605 (i) a nursing care facility described in Subsection 26-21-2(17);

1606 (ii) beginning January 1, 2006, a designated swing bed in:

1607 (A) a general acute hospital as defined in Subsection 26-21-2(11); and
 1608 (B) a critical access hospital which meets the criteria of 42[;] U.S.C. Sec. 1395i-4(c)(2)
 1609 (1998); and

1610 (iii) an intermediate care facility for [~~the mentally retarded~~] people with an intellectual
 1611 disability that is licensed under Section 26-21-13.5.

1612 (b) "Nursing care facility" does not include:

1613 (i) the Utah State Developmental Center;

1614 (ii) the Utah State Hospital;

1615 (iii) a general acute hospital, specialty hospital, or small health care facility as defined
 1616 in Section 26-21-2; or

1617 (iv) a Utah State Veterans' Home.

1618 (2) "Patient day" means each calendar day in which an individual patient is admitted to
 1619 the nursing care facility during a calendar month, even if on a temporary leave of absence from
 1620 the facility.

1621 Section 34. Section **26-35a-108** is amended to read:

1622 **26-35a-108. Intermediate care facility for people with an intellectual disability --**
 1623 **Uniform rate.**

1624 An intermediate care facility for [~~the mentally retarded~~] people with an intellectual
 1625 disability is subject to all the provisions of this chapter, except that the department shall
 1626 establish a uniform rate for [~~intermediate care facilities for the mentally retarded~~] an
 1627 intermediate care facility for people with an intellectual disability that:

1628 (1) is based on the same formula specified for nursing care facilities under the
 1629 provisions of Subsection 26-35a-104(1)(b); and

1630 (2) may be different than the uniform rate established for other nursing care facilities.

1631 Section 35. Section **31A-1-301** is amended to read:

1632 **31A-1-301. Definitions.**

1633 As used in this title, unless otherwise specified:

1634 (1) (a) "Accident and health insurance" means insurance to provide protection against
 1635 economic losses resulting from:

1636 (i) a medical condition including:

1637 (A) a medical care expense; or

- 1638 (B) the risk of disability;
- 1639 (ii) accident; or
- 1640 (iii) sickness.
- 1641 (b) "Accident and health insurance":
- 1642 (i) includes a contract with disability contingencies including:
- 1643 (A) an income replacement contract;
- 1644 (B) a health care contract;
- 1645 (C) an expense reimbursement contract;
- 1646 (D) a credit accident and health contract;
- 1647 (E) a continuing care contract; and
- 1648 (F) a long-term care contract; and
- 1649 (ii) may provide:
- 1650 (A) hospital coverage;
- 1651 (B) surgical coverage;
- 1652 (C) medical coverage;
- 1653 (D) loss of income coverage;
- 1654 (E) prescription drug coverage;
- 1655 (F) dental coverage; or
- 1656 (G) vision coverage.
- 1657 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 1658 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 1659 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1660 (3) "Administrator" is defined in Subsection (159).
- 1661 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 1662 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 1663 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 1664 ownership, if substantially the same group of individuals manage the corporations.
- 1665 (6) "Agency" means:
- 1666 (a) a person other than an individual, including a sole proprietorship by which an
- 1667 individual does business under an assumed name; and
- 1668 (b) an insurance organization licensed or required to be licensed under Section

1669 31A-23a-301.

1670 (7) "Alien insurer" means an insurer domiciled outside the United States.

1671 (8) "Amendment" means an endorsement to an insurance policy or certificate.

1672 (9) "Annuity" means an agreement to make periodical payments for a period certain or
1673 over the lifetime of one or more individuals if the making or continuance of all or some of the
1674 series of the payments, or the amount of the payment, is dependent upon the continuance of
1675 human life.

1676 (10) "Application" means a document:

1677 (a) (i) completed by an applicant to provide information about the risk to be insured;
1678 and

1679 (ii) that contains information that is used by the insurer to evaluate risk and decide
1680 whether to:

1681 (A) insure the risk under:

1682 (I) the coverage as originally offered; or

1683 (II) a modification of the coverage as originally offered; or

1684 (B) decline to insure the risk; or

1685 (b) used by the insurer to gather information from the applicant before issuance of an
1686 annuity contract.

1687 (11) "Articles" or "articles of incorporation" means:

1688 (a) the original articles;

1689 (b) a special law;

1690 (c) a charter;

1691 (d) an amendment;

1692 (e) restated articles;

1693 (f) articles of merger or consolidation;

1694 (g) a trust instrument;

1695 (h) another constitutive document for a trust or other entity that is not a corporation;

1696 and

1697 (i) an amendment to an item listed in Subsections (11)(a) through (h).

1698 (12) "Bail bond insurance" means a guarantee that a person will attend court when
1699 required, up to and including surrender of the person in execution of a sentence imposed under

1700 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

1701 (13) "Binder" is defined in Section 31A-21-102.

1702 (14) "Blanket insurance policy" means a group policy covering a defined class of

1703 persons:

1704 (a) without individual underwriting or application; and

1705 (b) that is determined by definition with or without designating each person covered.

1706 (15) "Board," "board of trustees," or "board of directors" means the group of persons

1707 with responsibility over, or management of, a corporation, however designated.

1708 (16) "Business entity" means:

1709 (a) a corporation;

1710 (b) an association;

1711 (c) a partnership;

1712 (d) a limited liability company;

1713 (e) a limited liability partnership; or

1714 (f) another legal entity.

1715 (17) "Business of insurance" is defined in Subsection (85).

1716 (18) "Business plan" means the information required to be supplied to the

1717 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required

1718 when these subsections apply by reference under:

1719 (a) Section 31A-7-201;

1720 (b) Section 31A-8-205; or

1721 (c) Subsection 31A-9-205(2).

1722 (19) (a) "Bylaws" means the rules adopted for the regulation or management of a

1723 corporation's affairs, however designated.

1724 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a

1725 corporation.

1726 (20) "Captive insurance company" means:

1727 (a) an insurer:

1728 (i) owned by another organization; and

1729 (ii) whose exclusive purpose is to insure risks of the parent organization and an

1730 affiliated company; or

- 1731 (b) in the case of a group or association, an insurer:
1732 (i) owned by the insureds; and
1733 (ii) whose exclusive purpose is to insure risks of:
1734 (A) a member organization;
1735 (B) a group member; or
1736 (C) an affiliate of:
1737 (I) a member organization; or
1738 (II) a group member.
1739 (21) "Casualty insurance" means liability insurance.
1740 (22) "Certificate" means evidence of insurance given to:
1741 (a) an insured under a group insurance policy; or
1742 (b) a third party.
1743 (23) "Certificate of authority" is included within the term "license."
1744 (24) "Claim," unless the context otherwise requires, means a request or demand on an
1745 insurer for payment of a benefit according to the terms of an insurance policy.
1746 (25) "Claims-made coverage" means an insurance contract or provision limiting
1747 coverage under a policy insuring against legal liability to claims that are first made against the
1748 insured while the policy is in force.
1749 (26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
1750 commissioner.
1751 (b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent
1752 supervisory official of another jurisdiction.
1753 (27) (a) "Continuing care insurance" means insurance that:
1754 (i) provides board and lodging;
1755 (ii) provides one or more of the following:
1756 (A) a personal service;
1757 (B) a nursing service;
1758 (C) a medical service; or
1759 (D) any other health-related service; and
1760 (iii) provides the coverage described in this Subsection (27)(a) under an agreement
1761 effective:

1762 (A) for the life of the insured; or

1763 (B) for a period in excess of one year.

1764 (b) Insurance is continuing care insurance regardless of whether or not the board and
1765 lodging are provided at the same location as a service described in Subsection (27)(a)(ii).

1766 (28) (a) "Control," "controlling," "controlled," or "under common control" means the
1767 direct or indirect possession of the power to direct or cause the direction of the management
1768 and policies of a person. This control may be:

1769 (i) by contract;

1770 (ii) by common management;

1771 (iii) through the ownership of voting securities; or

1772 (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

1773 (b) There is no presumption that an individual holding an official position with another
1774 person controls that person solely by reason of the position.

1775 (c) A person having a contract or arrangement giving control is considered to have
1776 control despite the illegality or invalidity of the contract or arrangement.

1777 (d) There is a rebuttable presumption of control in a person who directly or indirectly
1778 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
1779 voting securities of another person.

1780 (29) "Controlled insurer" means a licensed insurer that is either directly or indirectly
1781 controlled by a producer.

1782 (30) "Controlling person" means a person that directly or indirectly has the power to
1783 direct or cause to be directed, the management, control, or activities of a reinsurance
1784 intermediary.

1785 (31) "Controlling producer" means a producer who directly or indirectly controls an
1786 insurer.

1787 (32) (a) "Corporation" means an insurance corporation, except when referring to:

1788 (i) a corporation doing business:

1789 (A) as:

1790 (I) an insurance producer;

1791 (II) a limited line producer;

1792 (III) a consultant;

- 1793 (IV) a managing general agent;
- 1794 (V) a reinsurance intermediary;
- 1795 (VI) a third party administrator; or
- 1796 (VII) an adjuster; and
- 1797 (B) under:
- 1798 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1799 Reinsurance Intermediaries;
- 1800 (II) Chapter 25, Third Party Administrators; or
- 1801 (III) Chapter 26, Insurance Adjusters; or
- 1802 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 1803 Holding Companies.
- 1804 (b) "Stock corporation" means a stock insurance corporation.
- 1805 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 1806 (33) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 1807 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
- 1808 104-191, 110 Stat. 1936.
- 1809 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 1810 such as:
- 1811 (i) the Primary Care Network Program under a Medicaid primary care network
- 1812 demonstration waiver obtained subject to Section 26-18-3;
- 1813 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 1814 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 1815 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 1816 (34) "Credit accident and health insurance" means insurance on a debtor to provide
- 1817 indemnity for payments coming due on a specific loan or other credit transaction while the
- 1818 debtor ~~[is disabled]~~ has a disability.
- 1819 (35) (a) "Credit insurance" means insurance offered in connection with an extension of
- 1820 credit that is limited to partially or wholly extinguishing that credit obligation.
- 1821 (b) "Credit insurance" includes:
- 1822 (i) credit accident and health insurance;
- 1823 (ii) credit life insurance;

- 1824 (iii) credit property insurance;
- 1825 (iv) credit unemployment insurance;
- 1826 (v) guaranteed automobile protection insurance;
- 1827 (vi) involuntary unemployment insurance;
- 1828 (vii) mortgage accident and health insurance;
- 1829 (viii) mortgage guaranty insurance; and
- 1830 (ix) mortgage life insurance.
- 1831 (36) "Credit life insurance" means insurance on the life of a debtor in connection with
- 1832 an extension of credit that pays a person if the debtor dies.
- 1833 (37) "Credit property insurance" means insurance:
- 1834 (a) offered in connection with an extension of credit; and
- 1835 (b) that protects the property until the debt is paid.
- 1836 (38) "Credit unemployment insurance" means insurance:
- 1837 (a) offered in connection with an extension of credit; and
- 1838 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 1839 (i) specific loan; or
- 1840 (ii) credit transaction.
- 1841 (39) "Creditor" means a person, including an insured, having a claim, whether:
- 1842 (a) matured;
- 1843 (b) unmatured;
- 1844 (c) liquidated;
- 1845 (d) unliquidated;
- 1846 (e) secured;
- 1847 (f) unsecured;
- 1848 (g) absolute;
- 1849 (h) fixed; or
- 1850 (i) contingent.
- 1851 (40) (a) "Customer service representative" means a person that provides an insurance
- 1852 service and insurance product information:
- 1853 (i) for the customer service representative's:
- 1854 (A) producer; or

- 1855 (B) consultant employer; and
- 1856 (ii) to the customer service representative's employer's:
- 1857 (A) customer;
- 1858 (B) client; or
- 1859 (C) organization.
- 1860 (b) A customer service representative may only operate within the scope of authority of
- 1861 the customer service representative's producer or consultant employer.
- 1862 (41) "Deadline" means a final date or time:
- 1863 (a) imposed by:
- 1864 (i) statute;
- 1865 (ii) rule; or
- 1866 (iii) order; and
- 1867 (b) by which a required filing or payment must be received by the department.
- 1868 (42) "Deemer clause" means a provision under this title under which upon the
- 1869 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 1870 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 1871 take a specific action.
- 1872 (43) "Degree of relationship" means the number of steps between two persons
- 1873 determined by counting the generations separating one person from a common ancestor and
- 1874 then counting the generations to the other person.
- 1875 (44) "Department" means the Insurance Department.
- 1876 (45) "Director" means a member of the board of directors of a corporation.
- 1877 (46) "Disability" means a physiological or psychological condition that partially or
- 1878 totally limits an individual's ability to:
- 1879 (a) perform the duties of:
- 1880 (i) that individual's occupation; or
- 1881 (ii) any occupation for which the individual is reasonably suited by education, training,
- 1882 or experience; or
- 1883 (b) perform two or more of the following basic activities of daily living:
- 1884 (i) eating;
- 1885 (ii) toileting;

- 1886 (iii) transferring;
- 1887 (iv) bathing; or
- 1888 (v) dressing.
- 1889 (47) "Disability income insurance" is defined in Subsection (76).
- 1890 (48) "Domestic insurer" means an insurer organized under the laws of this state.
- 1891 (49) "Domiciliary state" means the state in which an insurer:
- 1892 (a) is incorporated;
- 1893 (b) is organized; or
- 1894 (c) in the case of an alien insurer, enters into the United States.
- 1895 (50) (a) "Eligible employee" means:
- 1896 (i) an employee who:
- 1897 (A) works on a full-time basis; and
- 1898 (B) has a normal work week of 30 or more hours; or
- 1899 (ii) a person described in Subsection (50)(b).
- 1900 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 1901 plan of a small employer:
- 1902 (i) a sole proprietor;
- 1903 (ii) a partner in a partnership; or
- 1904 (iii) an independent contractor.
- 1905 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):
- 1906 (i) an individual who works on a temporary or substitute basis for a small employer;
- 1907 (ii) an employer's spouse; or
- 1908 (iii) a dependent of an employer.
- 1909 (51) "Employee" means an individual employed by an employer.
- 1910 (52) "Employee benefits" means one or more benefits or services provided to:
- 1911 (a) an employee; or
- 1912 (b) a dependent of an employee.
- 1913 (53) (a) "Employee welfare fund" means a fund:
- 1914 (i) established or maintained, whether directly or through a trustee, by:
- 1915 (A) one or more employers;
- 1916 (B) one or more labor organizations; or

- 1917 (C) a combination of employers and labor organizations; and
1918 (ii) that provides employee benefits paid or contracted to be paid, other than income
1919 from investments of the fund:
1920 (A) by or on behalf of an employer doing business in this state; or
1921 (B) for the benefit of a person employed in this state.
1922 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
1923 revenues.
1924 (54) "Endorsement" means a written agreement attached to a policy or certificate to
1925 modify the policy or certificate coverage.
1926 (55) "Enrollment date," with respect to a health benefit plan, means:
1927 (a) the first day of coverage; or
1928 (b) if there is a waiting period, the first day of the waiting period.
1929 (56) (a) "Escrow" means:
1930 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
1931 the requirements of a written agreement between the parties in a real estate transaction; or
1932 (ii) a settlement or closing involving:
1933 (A) a mobile home;
1934 (B) a grazing right;
1935 (C) a water right; or
1936 (D) other personal property authorized by the commissioner.
1937 (b) "Escrow" includes the act of conducting a:
1938 (i) real estate settlement; or
1939 (ii) real estate closing.
1940 (57) "Escrow agent" means:
1941 (a) an insurance producer with:
1942 (i) a title insurance line of authority; and
1943 (ii) an escrow subline of authority; or
1944 (b) a person defined as an escrow agent in Section 7-22-101.
1945 (58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
1946 excluded.
1947 (b) The items listed in a list using the term "excludes" are representative examples for

1948 use in interpretation of this title.

1949 (59) "Exclusion" means for the purposes of accident and health insurance that an
1950 insurer does not provide insurance coverage, for whatever reason, for one of the following:

1951 (a) a specific physical condition;

1952 (b) a specific medical procedure;

1953 (c) a specific disease or disorder; or

1954 (d) a specific prescription drug or class of prescription drugs.

1955 (60) "Expense reimbursement insurance" means insurance:

1956 (a) written to provide a payment for an expense relating to hospital confinement
1957 resulting from illness or injury; and

1958 (b) written:

1959 (i) as a daily limit for a specific number of days in a hospital; and

1960 (ii) to have a one or two day waiting period following a hospitalization.

1961 (61) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
1962 a position of public or private trust.

1963 (62) (a) "Filed" means that a filing is:

1964 (i) submitted to the department as required by and in accordance with applicable
1965 statute, rule, or filing order;

1966 (ii) received by the department within the time period provided in applicable statute,
1967 rule, or filing order; and

1968 (iii) accompanied by the appropriate fee in accordance with:

1969 (A) Section 31A-3-103; or

1970 (B) rule.

1971 (b) "Filed" does not include a filing that is rejected by the department because it is not
1972 submitted in accordance with Subsection (62)(a).

1973 (63) "Filing," when used as a noun, means an item required to be filed with the
1974 department including:

1975 (a) a policy;

1976 (b) a rate;

1977 (c) a form;

1978 (d) a document;

- 1979 (e) a plan;
- 1980 (f) a manual;
- 1981 (g) an application;
- 1982 (h) a report;
- 1983 (i) a certificate;
- 1984 (j) an endorsement;
- 1985 (k) an actuarial certification;
- 1986 (l) a licensee annual statement;
- 1987 (m) a licensee renewal application;
- 1988 (n) an advertisement; or
- 1989 (o) an outline of coverage.
- 1990 (64) "First party insurance" means an insurance policy or contract in which the insurer
- 1991 agrees to pay a claim submitted to it by the insured for the insured's losses.
- 1992 (65) "Foreign insurer" means an insurer domiciled outside of this state, including an
- 1993 alien insurer.
- 1994 (66) (a) "Form" means one of the following prepared for general use:
- 1995 (i) a policy;
- 1996 (ii) a certificate;
- 1997 (iii) an application;
- 1998 (iv) an outline of coverage; or
- 1999 (v) an endorsement.
- 2000 (b) "Form" does not include a document specially prepared for use in an individual
- 2001 case.
- 2002 (67) "Franchise insurance" means an individual insurance policy provided through a
- 2003 mass marketing arrangement involving a defined class of persons related in some way other
- 2004 than through the purchase of insurance.
- 2005 (68) "General lines of authority" include:
- 2006 (a) the general lines of insurance in Subsection (69);
- 2007 (b) title insurance under one of the following sublines of authority:
- 2008 (i) search, including authority to act as a title marketing representative;
- 2009 (ii) escrow, including authority to act as a title marketing representative; and

2010 (iii) title marketing representative only;
2011 (c) surplus lines;
2012 (d) workers' compensation; and
2013 (e) any other line of insurance that the commissioner considers necessary to recognize
2014 in the public interest.
2015 (69) "General lines of insurance" include:
2016 (a) accident and health;
2017 (b) casualty;
2018 (c) life;
2019 (d) personal lines;
2020 (e) property; and
2021 (f) variable contracts, including variable life and annuity.
2022 (70) "Group health plan" means an employee welfare benefit plan to the extent that the
2023 plan provides medical care:
2024 (a) (i) to an employee; or
2025 (ii) to a dependent of an employee; and
2026 (b) (i) directly;
2027 (ii) through insurance reimbursement; or
2028 (iii) through another method.
2029 (71) (a) "Group insurance policy" means a policy covering a group of persons that is
2030 issued:
2031 (i) to a policyholder on behalf of the group; and
2032 (ii) for the benefit of a member of the group who is selected under a procedure defined
2033 in:
2034 (A) the policy; or
2035 (B) an agreement that is collateral to the policy.
2036 (b) A group insurance policy may include a member of the policyholder's family or a
2037 dependent.
2038 (72) "Guaranteed automobile protection insurance" means insurance offered in
2039 connection with an extension of credit that pays the difference in amount between the
2040 insurance settlement and the balance of the loan if the insured automobile is a total loss.

2041 (73) (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy
2042 or certificate that:

- 2043 (i) provides health care insurance;
- 2044 (ii) provides major medical expense insurance; or
- 2045 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - 2046 (A) a hospital confinement indemnity; or
 - 2047 (B) a limited benefit plan.

2048 (b) "Health benefit plan" does not include a policy or certificate that:

- 2049 (i) provides benefits solely for:
 - 2050 (A) accident;
 - 2051 (B) dental;
 - 2052 (C) income replacement;
 - 2053 (D) long-term care;
 - 2054 (E) a Medicare supplement;
 - 2055 (F) a specified disease;
 - 2056 (G) vision; or
 - 2057 (H) a short-term limited duration; or
- 2058 (ii) is offered and marketed as supplemental health insurance.

2059 (74) "Health care" means any of the following intended for use in the diagnosis,
2060 treatment, mitigation, or prevention of a human ailment or impairment:

- 2061 (a) a professional service;
- 2062 (b) a personal service;
- 2063 (c) a facility;
- 2064 (d) equipment;
- 2065 (e) a device;
- 2066 (f) supplies; or
- 2067 (g) medicine.

2068 (75) (a) "Health care insurance" or "health insurance" means insurance providing:

- 2069 (i) a health care benefit; or
- 2070 (ii) payment of an incurred health care expense.

2071 (b) "Health care insurance" or "health insurance" does not include accident and health

2072 insurance providing a benefit for:

2073 (i) replacement of income;

2074 (ii) short-term accident;

2075 (iii) fixed indemnity;

2076 (iv) credit accident and health;

2077 (v) supplements to liability;

2078 (vi) workers' compensation;

2079 (vii) automobile medical payment;

2080 (viii) no-fault automobile;

2081 (ix) equivalent self-insurance; or

2082 (x) a type of accident and health insurance coverage that is a part of or attached to

2083 another type of policy.

2084 (76) "Income replacement insurance" or "disability income insurance" means insurance
2085 written to provide payments to replace income lost from accident or sickness.

2086 (77) "Indemnity" means the payment of an amount to offset all or part of an insured
2087 loss.

2088 (78) "Independent adjuster" means an insurance adjuster required to be licensed under
2089 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

2090 (79) "Independently procured insurance" means insurance procured under Section
2091 31A-15-104.

2092 (80) "Individual" means a natural person.

2093 (81) "Inland marine insurance" includes insurance covering:

2094 (a) property in transit on or over land;

2095 (b) property in transit over water by means other than boat or ship;

2096 (c) bailee liability;

2097 (d) fixed transportation property such as bridges, electric transmission systems, radio
2098 and television transmission towers and tunnels; and

2099 (e) personal and commercial property floaters.

2100 (82) "Insolvency" means that:

2101 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
2102 obligations mature;

- 2103 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
2104 RBC under Subsection 31A-17-601(8)(c); or
- 2105 (c) an insurer is determined to be hazardous under this title.
- 2106 (83) (a) "Insurance" means:
- 2107 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
2108 persons to one or more other persons; or
- 2109 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
2110 group of persons that includes the person seeking to distribute that person's risk.
- 2111 (b) "Insurance" includes:
- 2112 (i) a risk distributing arrangement providing for compensation or replacement for
2113 damages or loss through the provision of a service or a benefit in kind;
- 2114 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
2115 business and not as merely incidental to a business transaction; and
- 2116 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
2117 but with a class of persons who have agreed to share the risk.
- 2118 (84) "Insurance adjuster" means a person who directs the investigation, negotiation, or
2119 settlement of a claim under an insurance policy other than life insurance or an annuity, on
2120 behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 2121 (85) "Insurance business" or "business of insurance" includes:
- 2122 (a) providing health care insurance by an organization that is or is required to be
2123 licensed under this title;
- 2124 (b) providing a benefit to an employee in the event of a contingency not within the
2125 control of the employee, in which the employee is entitled to the benefit as a right, which
2126 benefit may be provided either:
- 2127 (i) by a single employer or by multiple employer groups; or
- 2128 (ii) through one or more trusts, associations, or other entities;
- 2129 (c) providing an annuity:
- 2130 (i) including an annuity issued in return for a gift; and
- 2131 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
2132 and (3);
- 2133 (d) providing the characteristic services of a motor club as outlined in Subsection

- 2134 (113);
- 2135 (e) providing another person with insurance;
- 2136 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 2137 or surety, a contract or policy of title insurance;
- 2138 (g) transacting or proposing to transact any phase of title insurance, including:
- 2139 (i) solicitation;
- 2140 (ii) negotiation preliminary to execution;
- 2141 (iii) execution of a contract of title insurance;
- 2142 (iv) insuring;
- 2143 (v) transacting matters subsequent to the execution of the contract and arising out of
- 2144 the contract, including reinsurance; and
- 2145 (vi) transacting or proposing a life settlement; and
- 2146 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 2147 (85)(a) through (g) in a manner designed to evade this title.
- 2148 (86) "Insurance consultant" or "consultant" means a person who:
- 2149 (a) advises another person about insurance needs and coverages;
- 2150 (b) is compensated by the person advised on a basis not directly related to the insurance
- 2151 placed; and
- 2152 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 2153 indirectly by an insurer or producer for advice given.
- 2154 (87) "Insurance holding company system" means a group of two or more affiliated
- 2155 persons, at least one of whom is an insurer.
- 2156 (88) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 2157 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 2158 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 2159 insurance customer or an insured:
- 2160 (i) "producer for the insurer" means a producer who is compensated directly or
- 2161 indirectly by an insurer for selling, soliciting, or negotiating a product of that insurer; and
- 2162 (ii) "producer for the insured" means a producer who:
- 2163 (A) is compensated directly and only by an insurance customer or an insured; and
- 2164 (B) receives no compensation directly or indirectly from an insurer for selling,

2165 soliciting, or negotiating a product of that insurer to an insurance customer or insured.

2166 (89) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
2167 promise in an insurance policy and includes:

2168 (i) a policyholder;

2169 (ii) a subscriber;

2170 (iii) a member; and

2171 (iv) a beneficiary.

2172 (b) The definition in Subsection (89)(a):

2173 (i) applies only to this title; and

2174 (ii) does not define the meaning of this word as used in an insurance policy or
2175 certificate.

2176 (90) (a) "Insurer" means a person doing an insurance business as a principal including:

2177 (i) a fraternal benefit society;

2178 (ii) an issuer of a gift annuity other than an annuity specified in Subsections

2179 31A-22-1305(2) and (3);

2180 (iii) a motor club;

2181 (iv) an employee welfare plan; and

2182 (v) a person purporting or intending to do an insurance business as a principal on that
2183 person's own account.

2184 (b) "Insurer" does not include a governmental entity to the extent the governmental
2185 entity is engaged in an activity described in Section 31A-12-107.

2186 (91) "Interinsurance exchange" is defined in Subsection (142).

2187 (92) "Involuntary unemployment insurance" means insurance:

2188 (a) offered in connection with an extension of credit; and

2189 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
2190 coming due on a:

2191 (i) specific loan; or

2192 (ii) credit transaction.

2193 (93) "Large employer," in connection with a health benefit plan, means an employer
2194 who, with respect to a calendar year and to a plan year:

2195 (a) employed an average of at least 51 eligible employees on each business day during

2196 the preceding calendar year; and

2197 (b) employs at least two employees on the first day of the plan year.

2198 (94) "Late enrollee," with respect to an employer health benefit plan, means an
2199 individual whose enrollment is a late enrollment.

2200 (95) "Late enrollment," with respect to an employer health benefit plan, means
2201 enrollment of an individual other than:

2202 (a) on the earliest date on which coverage can become effective for the individual
2203 under the terms of the plan; or

2204 (b) through special enrollment.

2205 (96) (a) Except for a retainer contract or legal assistance described in Section
2206 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
2207 specified legal expense.

2208 (b) "Legal expense insurance" includes an arrangement that creates a reasonable
2209 expectation of an enforceable right.

2210 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
2211 legal services incidental to other insurance coverage.

2212 (97) (a) "Liability insurance" means insurance against liability:

2213 (i) for death, injury, or disability of a human being, or for damage to property,
2214 exclusive of the coverages under:

2215 (A) Subsection (107) for medical malpractice insurance;

2216 (B) Subsection (134) for professional liability insurance; and

2217 (C) Subsection (168) for workers' compensation insurance;

2218 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
2219 insured who is injured, irrespective of legal liability of the insured, when issued with or

2220 supplemental to insurance against legal liability for the death, injury, or disability of a human
2221 being, exclusive of the coverages under:

2222 (A) Subsection (107) for medical malpractice insurance;

2223 (B) Subsection (134) for professional liability insurance; and

2224 (C) Subsection (168) for workers' compensation insurance;

2225 (iii) for loss or damage to property resulting from an accident to or explosion of a
2226 boiler, pipe, pressure container, machinery, or apparatus;

- 2227 (iv) for loss or damage to property caused by:
- 2228 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
- 2229 (B) water entering through a leak or opening in a building; or
- 2230 (v) for other loss or damage properly the subject of insurance not within another kind
- 2231 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
- 2232 (b) "Liability insurance" includes:
- 2233 (i) vehicle liability insurance;
- 2234 (ii) residential dwelling liability insurance; and
- 2235 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
- 2236 boiler, machinery, or apparatus of any kind when done in connection with insurance on the
- 2237 elevator, boiler, machinery, or apparatus.
- 2238 (98) (a) "License" means authorization issued by the commissioner to engage in an
- 2239 activity that is part of or related to the insurance business.
- 2240 (b) "License" includes a certificate of authority issued to an insurer.
- 2241 (99) (a) "Life insurance" means:
- 2242 (i) insurance on a human life; and
- 2243 (ii) insurance pertaining to or connected with human life.
- 2244 (b) The business of life insurance includes:
- 2245 (i) granting a death benefit;
- 2246 (ii) granting an annuity benefit;
- 2247 (iii) granting an endowment benefit;
- 2248 (iv) granting an additional benefit in the event of death by accident;
- 2249 (v) granting an additional benefit to safeguard the policy against lapse; and
- 2250 (vi) providing an optional method of settlement of proceeds.
- 2251 (100) "Limited license" means a license that:
- 2252 (a) is issued for a specific product of insurance; and
- 2253 (b) limits an individual or agency to transact only for that product or insurance.
- 2254 (101) "Limited line credit insurance" includes the following forms of insurance:
- 2255 (a) credit life;
- 2256 (b) credit accident and health;
- 2257 (c) credit property;

- 2258 (d) credit unemployment;
- 2259 (e) involuntary unemployment;
- 2260 (f) mortgage life;
- 2261 (g) mortgage guaranty;
- 2262 (h) mortgage accident and health;
- 2263 (i) guaranteed automobile protection; and
- 2264 (j) another form of insurance offered in connection with an extension of credit that:
- 2265 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 2266 (ii) the commissioner determines by rule should be designated as a form of limited line
- 2267 credit insurance.

2268 (102) "Limited line credit insurance producer" means a person who sells, solicits, or

2269 negotiates one or more forms of limited line credit insurance coverage to an individual through

2270 a master, corporate, group, or individual policy.

2271 (103) "Limited line insurance" includes:

- 2272 (a) bail bond;
- 2273 (b) limited line credit insurance;
- 2274 (c) legal expense insurance;
- 2275 (d) motor club insurance;
- 2276 (e) rental car-related insurance;
- 2277 (f) travel insurance;
- 2278 (g) crop insurance;
- 2279 (h) self-service storage insurance; and
- 2280 (i) another form of limited insurance that the commissioner determines by rule should
- 2281 be designated a form of limited line insurance.

2282 (104) "Limited lines authority" includes:

- 2283 (a) the lines of insurance listed in Subsection (103); and
- 2284 (b) a customer service representative.

2285 (105) "Limited lines producer" means a person who sells, solicits, or negotiates limited

2286 lines insurance.

2287 (106) (a) "Long-term care insurance" means an insurance policy or rider advertised,

2288 marketed, offered, or designated to provide coverage:

- 2289 (i) in a setting other than an acute care unit of a hospital;
- 2290 (ii) for not less than 12 consecutive months for a covered person on the basis of:
- 2291 (A) expenses incurred;
- 2292 (B) indemnity;
- 2293 (C) prepayment; or
- 2294 (D) another method;
- 2295 (iii) for one or more necessary or medically necessary services that are:
- 2296 (A) diagnostic;
- 2297 (B) preventative;
- 2298 (C) therapeutic;
- 2299 (D) rehabilitative;
- 2300 (E) maintenance; or
- 2301 (F) personal care; and
- 2302 (iv) that may be issued by:
- 2303 (A) an insurer;
- 2304 (B) a fraternal benefit society;
- 2305 (C) (I) a nonprofit health hospital; and
- 2306 (II) a medical service corporation;
- 2307 (D) a prepaid health plan;
- 2308 (E) a health maintenance organization; or
- 2309 (F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)
- 2310 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 2311 (b) "Long-term care insurance" includes:
- 2312 (i) any of the following that provide directly or supplement long-term care insurance:
- 2313 (A) a group or individual annuity or rider; or
- 2314 (B) a life insurance policy or rider;
- 2315 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 2316 (A) cognitive impairment; or
- 2317 (B) functional capacity; or
- 2318 (iii) a qualified long-term care insurance contract.
- 2319 (c) "Long-term care insurance" does not include:

- 2320 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 2321 (ii) basic hospital expense coverage;
- 2322 (iii) basic medical/surgical expense coverage;
- 2323 (iv) hospital confinement indemnity coverage;
- 2324 (v) major medical expense coverage;
- 2325 (vi) income replacement or related asset-protection coverage;
- 2326 (vii) accident only coverage;
- 2327 (viii) coverage for a specified:
 - 2328 (A) disease; or
 - 2329 (B) accident;
- 2330 (ix) limited benefit health coverage; or
- 2331 (x) a life insurance policy that accelerates the death benefit to provide the option of a
2332 lump sum payment:
 - 2333 (A) if the following are not conditioned on the receipt of long-term care:
 - 2334 (I) benefits; or
 - 2335 (II) eligibility; and
 - 2336 (B) the coverage is for one or more the following qualifying events:
 - 2337 (I) terminal illness;
 - 2338 (II) medical conditions requiring extraordinary medical intervention; or
 - 2339 (III) permanent institutional confinement.
- 2340 (107) "Medical malpractice insurance" means insurance against legal liability incident
2341 to the practice and provision of a medical service other than the practice and provision of a
2342 dental service.
- 2343 (108) "Member" means a person having membership rights in an insurance
2344 corporation.
- 2345 (109) "Minimum capital" or "minimum required capital" means the capital that must be
2346 constantly maintained by a stock insurance corporation as required by statute.
- 2347 (110) "Mortgage accident and health insurance" means insurance offered in connection
2348 with an extension of credit that provides indemnity for payments coming due on a mortgage
2349 while the debtor [~~is disabled~~] has a disability.
- 2350 (111) "Mortgage guaranty insurance" means surety insurance under which a mortgagee

2351 or other creditor is indemnified against losses caused by the default of a debtor.

2352 (112) "Mortgage life insurance" means insurance on the life of a debtor in connection
2353 with an extension of credit that pays if the debtor dies.

2354 (113) "Motor club" means a person:

2355 (a) licensed under:

2356 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

2357 (ii) Chapter 11, Motor Clubs; or

2358 (iii) Chapter 14, Foreign Insurers; and

2359 (b) that promises for an advance consideration to provide for a stated period of time
2360 one or more:

2361 (i) legal services under Subsection 31A-11-102(1)(b);

2362 (ii) bail services under Subsection 31A-11-102(1)(c); or

2363 (iii) (A) trip reimbursement;

2364 (B) towing services;

2365 (C) emergency road services;

2366 (D) stolen automobile services;

2367 (E) a combination of the services listed in Subsections (113)(b)(iii)(A) through (D); or

2368 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

2369 (114) "Mutual" means a mutual insurance corporation.

2370 (115) "Network plan" means health care insurance:

2371 (a) that is issued by an insurer; and

2372 (b) under which the financing and delivery of medical care is provided, in whole or in
2373 part, through a defined set of providers under contract with the insurer, including the financing
2374 and delivery of an item paid for as medical care.

2375 (116) "Nonparticipating" means a plan of insurance under which the insured is not
2376 entitled to receive a dividend representing a share of the surplus of the insurer.

2377 (117) "Ocean marine insurance" means insurance against loss of or damage to:

2378 (a) ships or hulls of ships;

2379 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
2380 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
2381 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

2382 (c) earnings such as freight, passage money, commissions, or profits derived from
2383 transporting goods or people upon or across the oceans or inland waterways; or

2384 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
2385 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
2386 in connection with maritime activity.

2387 (118) "Order" means an order of the commissioner.

2388 (119) "Outline of coverage" means a summary that explains an accident and health
2389 insurance policy.

2390 (120) "Participating" means a plan of insurance under which the insured is entitled to
2391 receive a dividend representing a share of the surplus of the insurer.

2392 (121) "Participation," as used in a health benefit plan, means a requirement relating to
2393 the minimum percentage of eligible employees that must be enrolled in relation to the total
2394 number of eligible employees of an employer reduced by each eligible employee who
2395 voluntarily declines coverage under the plan because the employee:

2396 (a) has other group health care insurance coverage; or

2397 (b) receives:

2398 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
2399 Security Amendments of 1965; or

2400 (ii) another government health benefit.

2401 (122) "Person" includes:

2402 (a) an individual;

2403 (b) a partnership;

2404 (c) a corporation;

2405 (d) an incorporated or unincorporated association;

2406 (e) a joint stock company;

2407 (f) a trust;

2408 (g) a limited liability company;

2409 (h) a reciprocal;

2410 (i) a syndicate; or

2411 (j) another similar entity or combination of entities acting in concert.

2412 (123) "Personal lines insurance" means property and casualty insurance coverage sold

2413 for primarily noncommercial purposes to:

2414 (a) an individual; or

2415 (b) a family.

2416 (124) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

2417 (125) "Plan year" means:

2418 (a) the year that is designated as the plan year in:

2419 (i) the plan document of a group health plan; or

2420 (ii) a summary plan description of a group health plan;

2421 (b) if the plan document or summary plan description does not designate a plan year or

2422 there is no plan document or summary plan description:

2423 (i) the year used to determine deductibles or limits;

2424 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

2425 or

2426 (iii) the employer's taxable year if:

2427 (A) the plan does not impose deductibles or limits on a yearly basis; and

2428 (B) (I) the plan is not insured; or

2429 (II) the insurance policy is not renewed on an annual basis; or

2430 (c) in a case not described in Subsection (125)(a) or (b), the calendar year.

2431 (126) (a) "Policy" means a document, including an attached endorsement or application

2432 that:

2433 (i) purports to be an enforceable contract; and

2434 (ii) memorializes in writing some or all of the terms of an insurance contract.

2435 (b) "Policy" includes a service contract issued by:

2436 (i) a motor club under Chapter 11, Motor Clubs;

2437 (ii) a service contract provided under Chapter 6a, Service Contracts; and

2438 (iii) a corporation licensed under:

2439 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

2440 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

2441 (c) "Policy" does not include:

2442 (i) a certificate under a group insurance contract; or

2443 (ii) a document that does not purport to have legal effect.

2444 (127) "Policyholder" means a person who controls a policy, binder, or oral contract by
2445 ownership, premium payment, or otherwise.

2446 (128) "Policy illustration" means a presentation or depiction that includes
2447 nonguaranteed elements of a policy of life insurance over a period of years.

2448 (129) "Policy summary" means a synopsis describing the elements of a life insurance
2449 policy.

2450 (130) "Preexisting condition," with respect to a health benefit plan:

2451 (a) means a condition that was present before the effective date of coverage, whether or
2452 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
2453 and

2454 (b) does not include a condition indicated by genetic information unless an actual
2455 diagnosis of the condition by a physician has been made.

2456 (131) (a) "Premium" means the monetary consideration for an insurance policy.

2457 (b) "Premium" includes, however designated:

2458 (i) an assessment;

2459 (ii) a membership fee;

2460 (iii) a required contribution; or

2461 (iv) monetary consideration.

2462 (c) (i) "Premium" does not include consideration paid to a third party administrator for
2463 the third party administrator's services.

2464 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
2465 insurance on the risks administered by the third party administrator.

2466 (132) "Principal officers" for a corporation means the officers designated under
2467 Subsection 31A-5-203(3).

2468 (133) "Proceeding" includes an action or special statutory proceeding.

2469 (134) "Professional liability insurance" means insurance against legal liability incident
2470 to the practice of a profession and provision of a professional service.

2471 (135) (a) Except as provided in Subsection (135)(b), "property insurance" means
2472 insurance against loss or damage to real or personal property of every kind and any interest in
2473 that property:

2474 (i) from all hazards or causes; and

2475 (ii) against loss consequential upon the loss or damage including vehicle
2476 comprehensive and vehicle physical damage coverages.

2477 (b) "Property insurance" does not include:
2478 (i) inland marine insurance; and
2479 (ii) ocean marine insurance.

2480 (136) "Qualified long-term care insurance contract" or "federally tax qualified
2481 long-term care insurance contract" means:
2482 (a) an individual or group insurance contract that meets the requirements of Section
2483 7702B(b), Internal Revenue Code; or
2484 (b) the portion of a life insurance contract that provides long-term care insurance:
2485 (i) (A) by rider; or
2486 (B) as a part of the contract; and
2487 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
2488 Code.

2489 (137) "Qualified United States financial institution" means an institution that:
2490 (a) is:
2491 (i) organized under the laws of the United States or any state; or
2492 (ii) in the case of a United States office of a foreign banking organization, licensed
2493 under the laws of the United States or any state;
2494 (b) is regulated, supervised, and examined by a United States federal or state authority
2495 having regulatory authority over a bank or trust company; and
2496 (c) meets the standards of financial condition and standing that are considered
2497 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
2498 will be acceptable to the commissioner as determined by:
2499 (i) the commissioner by rule; or
2500 (ii) the Securities Valuation Office of the National Association of Insurance
2501 Commissioners.

2502 (138) (a) "Rate" means:
2503 (i) the cost of a given unit of insurance; or
2504 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
2505 expressed as:

- 2506 (A) a single number; or
- 2507 (B) a pure premium rate, adjusted before the application of individual risk variations
- 2508 based on loss or expense considerations to account for the treatment of:
- 2509 (I) expenses;
- 2510 (II) profit; and
- 2511 (III) individual insurer variation in loss experience.
- 2512 (b) "Rate" does not include a minimum premium.
- 2513 (139) (a) Except as provided in Subsection (139)(b), "rate service organization" means
- 2514 a person who assists an insurer in rate making or filing by:
- 2515 (i) collecting, compiling, and furnishing loss or expense statistics;
- 2516 (ii) recommending, making, or filing rates or supplementary rate information; or
- 2517 (iii) advising about rate questions, except as an attorney giving legal advice.
- 2518 (b) "Rate service organization" does not mean:
- 2519 (i) an employee of an insurer;
- 2520 (ii) a single insurer or group of insurers under common control;
- 2521 (iii) a joint underwriting group; or
- 2522 (iv) an individual serving as an actuarial or legal consultant.
- 2523 (140) "Rating manual" means any of the following used to determine initial and
- 2524 renewal policy premiums:
- 2525 (a) a manual of rates;
- 2526 (b) a classification;
- 2527 (c) a rate-related underwriting rule; and
- 2528 (d) a rating formula that describes steps, policies, and procedures for determining
- 2529 initial and renewal policy premiums.
- 2530 (141) "Received by the department" means:
- 2531 (a) the date delivered to and stamped received by the department, if delivered in
- 2532 person;
- 2533 (b) the post mark date, if delivered by mail;
- 2534 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 2535 (d) the received date recorded on an item delivered, if delivered by:
- 2536 (i) facsimile;

- 2537 (ii) email; or
- 2538 (iii) another electronic method; or
- 2539 (e) a date specified in:
- 2540 (i) a statute;
- 2541 (ii) a rule; or
- 2542 (iii) an order.
- 2543 (142) "Reciprocal" or "interinsurance exchange" means an unincorporated association
- 2544 of persons:
- 2545 (a) operating through an attorney-in-fact common to all of the persons; and
- 2546 (b) exchanging insurance contracts with one another that provide insurance coverage
- 2547 on each other.
- 2548 (143) "Reinsurance" means an insurance transaction where an insurer, for
- 2549 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
- 2550 reinsurance transactions, this title sometimes refers to:
- 2551 (a) the insurer transferring the risk as the "ceding insurer"; and
- 2552 (b) the insurer assuming the risk as the:
- 2553 (i) "assuming insurer"; or
- 2554 (ii) "assuming reinsurer."
- 2555 (144) "Reinsurer" means a person licensed in this state as an insurer with the authority
- 2556 to assume reinsurance.
- 2557 (145) "Residential dwelling liability insurance" means insurance against liability
- 2558 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
- 2559 a detached single family residence or multifamily residence up to four units.
- 2560 (146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
- 2561 under a reinsurance contract.
- 2562 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
- 2563 liability assumed under a reinsurance contract.
- 2564 (147) "Rider" means an endorsement to:
- 2565 (a) an insurance policy; or
- 2566 (b) an insurance certificate.
- 2567 (148) (a) "Security" means a:

- 2568 (i) note;
- 2569 (ii) stock;
- 2570 (iii) bond;
- 2571 (iv) debenture;
- 2572 (v) evidence of indebtedness;
- 2573 (vi) certificate of interest or participation in a profit-sharing agreement;
- 2574 (vii) collateral-trust certificate;
- 2575 (viii) preorganization certificate or subscription;
- 2576 (ix) transferable share;
- 2577 (x) investment contract;
- 2578 (xi) voting trust certificate;
- 2579 (xii) certificate of deposit for a security;
- 2580 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 2581 payments out of production under such a title or lease;
- 2582 (xiv) commodity contract or commodity option;
- 2583 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 2584 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 2585 in Subsections (148)(a)(i) through (xiv); or
- 2586 (xvi) another interest or instrument commonly known as a security.
- 2587 (b) "Security" does not include:
- 2588 (i) any of the following under which an insurance company promises to pay money in a
- 2589 specific lump sum or periodically for life or some other specified period:
- 2590 (A) insurance;
- 2591 (B) an endowment policy; or
- 2592 (C) an annuity contract; or
- 2593 (ii) a burial certificate or burial contract.
- 2594 (149) "Secondary medical condition" means a complication related to an exclusion
- 2595 from coverage in accident and health insurance.
- 2596 (150) "Self-insurance" means an arrangement under which a person provides for
- 2597 spreading its own risks by a systematic plan.
- 2598 (a) Except as provided in this Subsection (150), "self-insurance" does not include an

2599 arrangement under which a number of persons spread their risks among themselves.

2600 (b) "Self-insurance" includes:

2601 (i) an arrangement by which a governmental entity undertakes to indemnify an
2602 employee for liability arising out of the employee's employment; and

2603 (ii) an arrangement by which a person with a managed program of self-insurance and
2604 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
2605 employees for liability or risk that is related to the relationship or employment.

2606 (c) "Self-insurance" does not include an arrangement with an independent contractor.

2607 (151) "Sell" means to exchange a contract of insurance:

2608 (a) by any means;

2609 (b) for money or its equivalent; and

2610 (c) on behalf of an insurance company.

2611 (152) "Short-term care insurance" means an insurance policy or rider advertised,
2612 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
2613 but that provides coverage for less than 12 consecutive months for each covered person.

2614 (153) "Significant break in coverage" means a period of 63 consecutive days during
2615 each of which an individual does not have creditable coverage.

2616 (154) "Small employer," in connection with a health benefit plan, means an employer
2617 who, with respect to a calendar year and to a plan year:

2618 (a) employed an average of at least two employees but not more than 50 eligible
2619 employees on each business day during the preceding calendar year; and

2620 (b) employs at least two employees on the first day of the plan year.

2621 (155) "Special enrollment period," in connection with a health benefit plan, has the
2622 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
2623 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.

2624 (156) (a) "Subsidiary" of a person means an affiliate controlled by that person either
2625 directly or indirectly through one or more affiliates or intermediaries.

2626 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
2627 shares are owned by that person either alone or with its affiliates, except for the minimum
2628 number of shares the law of the subsidiary's domicile requires to be owned by directors or
2629 others.

- 2630 (157) Subject to Subsection (83)(b), "surety insurance" includes:
- 2631 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or
- 2632 perform the principal's obligations to a creditor or other obligee;
- 2633 (b) bail bond insurance; and
- 2634 (c) fidelity insurance.
- 2635 (158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
- 2636 liabilities.
- 2637 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by
- 2638 the insurer as permanent.
- 2639 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
- 2640 that mutuals doing business in this state maintain specified minimum levels of permanent
- 2641 surplus.
- 2642 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
- 2643 same as the minimum required capital requirement that applies to stock insurers.
- 2644 (c) "Excess surplus" means:
- 2645 (i) for a life insurer, accident and health insurer, health organization, or property and
- 2646 casualty insurer as defined in Section 31A-17-601, the lesser of:
- 2647 (A) that amount of an insurer's or health organization's total adjusted capital that
- 2648 exceeds the product of:
- 2649 (I) 2.5; and
- 2650 (II) the sum of the insurer's or health organization's minimum capital or permanent
- 2651 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or
- 2652 (B) that amount of an insurer's or health organization's total adjusted capital that
- 2653 exceeds the product of:
- 2654 (I) 3.0; and
- 2655 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and
- 2656 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer
- 2657 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
- 2658 (A) 1.5; and
- 2659 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
- 2660 (159) "Third party administrator" or "administrator" means a person who collects

2661 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
2662 the state in connection with insurance coverage, annuities, or service insurance coverage,
2663 except:

2664 (a) a union on behalf of its members;

2665 (b) a person administering a:

2666 (i) pension plan subject to the federal Employee Retirement Income Security Act of
2667 1974;

2668 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

2669 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

2670 (c) an employer on behalf of the employer's employees or the employees of one or
2671 more of the subsidiary or affiliated corporations of the employer;

2672 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
2673 for which the insurer holds a license in this state; or

2674 (e) a person:

2675 (i) licensed or exempt from licensing under:

2676 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
2677 Reinsurance Intermediaries; or

2678 (B) Chapter 26, Insurance Adjusters; and

2679 (ii) whose activities are limited to those authorized under the license the person holds
2680 or for which the person is exempt.

2681 (160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
2682 of real or personal property or the holder of liens or encumbrances on that property, or others
2683 interested in the property against loss or damage suffered by reason of liens or encumbrances
2684 upon, defects in, or the unmarketability of the title to the property, or invalidity or
2685 unenforceability of any liens or encumbrances on the property.

2686 (161) "Total adjusted capital" means the sum of an insurer's or health organization's
2687 statutory capital and surplus as determined in accordance with:

2688 (a) the statutory accounting applicable to the annual financial statements required to be
2689 filed under Section 31A-4-113; and

2690 (b) another item provided by the RBC instructions, as RBC instructions is defined in
2691 Section 31A-17-601.

2692 (162) (a) "Trustee" means "director" when referring to the board of directors of a
2693 corporation.

2694 (b) "Trustee," when used in reference to an employee welfare fund, means an
2695 individual, firm, association, organization, joint stock company, or corporation, whether acting
2696 individually or jointly and whether designated by that name or any other, that is charged with
2697 or has the overall management of an employee welfare fund.

2698 (163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
2699 means an insurer:

2700 (i) not holding a valid certificate of authority to do an insurance business in this state;
2701 or

2702 (ii) transacting business not authorized by a valid certificate.

2703 (b) "Admitted insurer" or "authorized insurer" means an insurer:

2704 (i) holding a valid certificate of authority to do an insurance business in this state; and

2705 (ii) transacting business as authorized by a valid certificate.

2706 (164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

2707 (165) "Vehicle liability insurance" means insurance against liability resulting from or
2708 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
2709 comprehensive or vehicle physical damage coverage under Subsection (135).

2710 (166) "Voting security" means a security with voting rights, and includes a security
2711 convertible into a security with a voting right associated with the security.

2712 (167) "Waiting period" for a health benefit plan means the period that must pass before
2713 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
2714 benefit plan, can become effective.

2715 (168) "Workers' compensation insurance" means:

2716 (a) insurance for indemnification of an employer against liability for compensation
2717 based on:

2718 (i) a compensable accidental injury; and

2719 (ii) occupational disease disability;

2720 (b) employer's liability insurance incidental to workers' compensation insurance and
2721 written in connection with workers' compensation insurance; and

2722 (c) insurance assuring to a person entitled to workers' compensation benefits the

2723 compensation provided by law.

2724 Section 36. Section **31A-22-611** is amended to read:

2725 **31A-22-611. Coverage for children with a disability.**

2726 (1) For the purposes of this section:

2727 (a) [~~"Disabled dependent"~~] "Dependent with a disability" means a child who is and
2728 continues to be both:

2729 (i) unable to engage in substantial gainful employment to the degree that the child can
2730 achieve economic independence due to a medically determinable physical or mental
2731 impairment which can be expected to result in death, or which has lasted or can be expected to
2732 last for a continuous period of not less than 12 months; and

2733 (ii) chiefly dependent upon an insured for support and maintenance since the child
2734 reached the age specified in Subsection 31A-22-610.5(2).

2735 [~~(e)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

2736 (i) [~~mental retardation~~] an intellectual disability;

2737 (ii) organic brain syndrome;

2738 (iii) emotional or mental illness; or

2739 (iv) specific learning disabilities as determined by the insurer.

2740 [~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or
2741 disfigurement, or anatomical loss affecting one or more of the following body systems:

2742 (i) neurological;

2743 (ii) musculoskeletal;

2744 (iii) special sense organs;

2745 (iv) respiratory organs;

2746 (v) speech organs;

2747 (vi) cardiovascular;

2748 (vii) reproductive;

2749 (viii) digestive;

2750 (ix) genito-urinary;

2751 (x) hemic and lymphatic;

2752 (xi) skin; or

2753 (xii) endocrine.

2754 (2) The insurer may require proof of the incapacity and dependency be furnished by the
2755 person insured under the policy within 30 days of the effective date or the date the child attains
2756 the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the
2757 insurer may not require proof more often than annually after the two-year period immediately
2758 following attainment of the limiting age by the [~~disabled~~] dependent with a disability.

2759 (3) Any individual or group accident and health insurance policy or health maintenance
2760 organization contract that provides coverage for a policyholder's or certificate holder's
2761 dependent shall, upon application, provide coverage for all unmarried [~~disabled~~] dependents
2762 with a disability who have been continuously covered, with no break of more than 63 days,
2763 under any accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

2764 (4) Every accident and health insurance policy or contract that provides coverage of a
2765 [~~disabled~~] dependent with a disability shall not terminate the policy due to an age limitation.

2766 Section 37. Section **31A-22-614** is amended to read:

2767 **31A-22-614. Claims under accident and health policies.**

2768 (1) Section 31A-21-312 applies generally to claims under accident and health policies.

2769 (2) (a) Subject to Subsection (1), an accident and health insurance policy may not
2770 contain a claim notice requirement less favorable to the insured than one which requires written
2771 notice of the claim within 20 days after the occurrence or commencement of any loss covered
2772 by the policy. The policy shall specify to whom claim notices may be given.

2773 (b) If a loss of time benefit under a policy may be paid for a period of at least two
2774 years, an insurer may require periodic notices that the insured continues to [~~be disabled~~] have a
2775 disability, unless the insured is legally incapacitated. The insured's delay in giving that notice
2776 does not impair the insured's or beneficiary's right to any indemnity which would otherwise
2777 have accrued during the six months preceding the date on which that notice is actually given.

2778 (3) An accident and health insurance policy may not contain a time limit on proof of
2779 loss which is more restrictive to the insured than a provision requiring written proof of loss,
2780 delivered to the insurer, within the following time:

2781 (a) for a claim where periodic payments are contingent upon continuing loss, within 90
2782 days after the termination of the period for which the insurer is liable; or

2783 (b) for any other claim, within 90 days after the date of the loss.

2784 (4) (a) (i) Section 31A-26-301 applies generally to the payment of claims.

2785 (ii) Indemnity for loss of life is paid in accordance with the beneficiary designation
2786 effective at the time of payment. If no valid beneficiary designation exists, the indemnity is
2787 paid to the insured's estate. Any other accrued indemnities unpaid at the insured's death are
2788 paid to the insured's estate.

2789 (b) Reasonable facility of payment clauses, specified by the commissioner by rule or in
2790 approving the policy form, are permitted. Payment made in good faith and in accordance with
2791 those clauses discharges the insurer's obligation to pay those claims.

2792 (c) All or a portion of any indemnities provided under an accident and health policy on
2793 account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid
2794 directly to the hospital or person rendering the services.

2795 Section 38. Section **31A-22-625** is amended to read:

2796 **31A-22-625. Catastrophic coverage of mental health conditions.**

2797 (1) As used in this section:

2798 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
2799 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
2800 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
2801 on an insured for the evaluation and treatment of a mental health condition than for the
2802 evaluation and treatment of a physical health condition.

2803 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
2804 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
2805 out-of-pocket limit.

2806 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
2807 limit for physical health conditions and another maximum out-of-pocket limit for mental health
2808 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
2809 for mental health conditions may not exceed the out-of-pocket limit for physical health
2810 conditions.

2811 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
2812 pays for at least 50% of covered services for the diagnosis and treatment of mental health
2813 conditions.

2814 (ii) "50/50 mental health coverage" may include a restriction on:

2815 (A) episodic limits;

- 2816 (B) inpatient or outpatient service limits; or
2817 (C) maximum out-of-pocket limits.
2818 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.
2819 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
2820 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
2821 periodically revised.
2822 (ii) "Mental health condition" does not include the following when diagnosed as the
2823 primary or substantial reason or need for treatment:
2824 (A) a marital or family problem;
2825 (B) a social, occupational, religious, or other social maladjustment;
2826 (C) a conduct disorder;
2827 (D) a chronic adjustment disorder;
2828 (E) a psychosexual disorder;
2829 (F) a chronic organic brain syndrome;
2830 (G) a personality disorder;
2831 (H) a specific developmental disorder or learning disability; or
2832 (I) ~~[mental retardation]~~ an intellectual disability.
2833 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
2834 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
2835 that it insures or seeks to insure a choice between catastrophic mental health coverage and
2836 50/50 mental health coverage.
2837 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
2838 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
2839 that exceed the minimum requirements of this section; or
2840 (ii) coverage that excludes benefits for mental health conditions.
2841 (c) A small employer may, at its option, choose either catastrophic mental health
2842 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),
2843 regardless of the employer's previous coverage for mental health conditions.
2844 (d) An insurer is exempt from the 30% index rating restriction in Section
2845 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the
2846 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or

2847 less enrolled employees who chooses coverage that meets or exceeds catastrophic mental
2848 health coverage.

2849 (3) An insurer shall offer a large employer mental health and substance use disorder
2850 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
2851 300gg-5, and federal regulations adopted pursuant to that act.

2852 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
2853 through a managed care organization or system in a manner consistent with Chapter 8, Health
2854 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
2855 policy uses a managed care organization or system for the treatment of physical health
2856 conditions.

2857 (b) (i) Notwithstanding any other provision of this title, an insurer may:

2858 (A) establish a closed panel of providers for catastrophic mental health coverage; and

2859 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider
2860 unless:

2861 (I) the insured is referred to a nonpanel provider with the prior authorization of the
2862 insurer; and

2863 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
2864 guidelines.

2865 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
2866 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the
2867 average amount paid by the insurer for comparable services of panel providers under a
2868 noncapitated arrangement who are members of the same class of health care providers.

2869 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a
2870 referral to a nonpanel provider.

2871 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
2872 mental health condition must be rendered:

2873 (i) by a mental health therapist as defined in Section 58-60-102; or

2874 (ii) in a health care facility:

2875 (A) licensed or otherwise authorized to provide mental health services pursuant to:

2876 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

2877 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

2878 (B) that provides a program for the treatment of a mental health condition pursuant to a
2879 written plan.

2880 (5) The commissioner may prohibit an insurance policy that provides mental health
2881 coverage in a manner that is inconsistent with this section.

2882 (6) The commissioner shall:

2883 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
2884 Rulemaking Act, as necessary to ensure compliance with this section; and

2885 (b) provide general figures on the percentage of insurance policies that include:

2886 (i) no mental health coverage;

2887 (ii) 50/50 mental health coverage;

2888 (iii) catastrophic mental health coverage; and

2889 (iv) coverage that exceeds the minimum requirements of this section.

2890 (7) This section may not be construed as discouraging or otherwise preventing an
2891 insurer from providing mental health coverage in connection with an individual insurance
2892 policy.

2893 (8) This section shall be repealed in accordance with Section 63I-1-231.

2894 Section 39. Section **31A-22-802** is amended to read:

2895 **31A-22-802. Definitions.**

2896 As used in this [Part-8] part:

2897 (1) "Credit accident and health insurance" means insurance on a debtor to provide
2898 indemnity for payments coming due on a specific loan or other credit transaction while the
2899 debtor [~~is disabled~~] has a disability.

2900 (2) "Credit life insurance" means life insurance on the life of a debtor in connection
2901 with a specific loan or credit transaction.

2902 (3) "Credit transaction" means any transaction under which the payment for money
2903 loaned or for goods, services, or properties sold or leased is to be made on future dates.

2904 (4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or
2905 property, for which payment is arranged through a credit transaction, or any successor to the
2906 right, title, or interest of any lender or vendor.

2907 (5) "Debtor" means a borrower of money or a purchaser, including a lessee under a
2908 lease intended as security, of goods, services, or property, for which payment is arranged

2909 through a credit transaction.

2910 (6) "Indebtedness" means the total amount payable by a debtor to a creditor in
2911 connection with a credit transaction, including principal finance charges and interest.

2912 (7) "Net indebtedness" means the total amount required to liquidate the indebtedness,
2913 exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage,
2914 or any finance charge.

2915 (8) "Net written premiums" means gross written premiums minus refunds on
2916 termination.

2917 Section 40. Section **31A-23a-114** is amended to read:

2918 **31A-23a-114. Temporary individual or agency license -- Trustee for terminated**
2919 **licensee's business.**

2920 (1) (a) The commissioner may issue a temporary individual or agency license:

2921 (i) to a person listed in Subsection (1)(b):

2922 (A) if the commissioner considers that the temporary license is necessary:

2923 (I) for the servicing of an insurance business in the public interest; and

2924 (II) to provide continued service to the insureds who procured insurance in a
2925 circumstance described in Subsection (1)(b);

2926 (B) for a period not to exceed 180 days; and

2927 (C) without requiring an examination; or

2928 (ii) in any other circumstance:

2929 (A) if the commissioner considers the public interest will best be served by issuing the
2930 temporary license;

2931 (B) for a period not to exceed 180 days; and

2932 (C) without requiring an examination.

2933 (b) The commissioner may issue a temporary individual or agency license in
2934 accordance with Subsection (1)(a) to:

2935 (i) the surviving spouse or court-appointed personal representative of a licensee who
2936 dies or [~~becomes mentally or physically disabled~~] acquires a mental or physical disability to
2937 allow adequate time for:

2938 (A) the sale of the insurance business owned by the licensee;

2939 (B) recovery or return of the licensee to the business; or

- 2940 (C) the training and licensing of new personnel to operate the licensee's business;
- 2941 (ii) to a member or employee of a business entity licensed as an agency upon the death
- 2942 or disability of an individual designated in:
- 2943 (A) the business entity application; or
- 2944 (B) the license; or
- 2945 (iii) the designee of a licensed agency entering active service in the armed forces of the
- 2946 United States of America.
- 2947 (2) If a person's license is terminated under Section 31A-23a-111 or 31A-23a-113, the
- 2948 commissioner may appoint a trustee to provide in the public interest continuing service to the
- 2949 insureds who procured insurance through the person whose license is terminated:
- 2950 (a) at the request of the person whose license is terminated; or
- 2951 (b) upon the commissioner's own initiative.
- 2952 (3) This section does not apply if the deceased [~~or disabled~~] licensee or licensee with a
- 2953 disability does not or did not own any ownership interest in the accounts and associated
- 2954 expiration lists that were previously serviced by the licensee.
- 2955 (4) (a) A person issued a temporary license under Subsection (1) receives the license
- 2956 and shall perform the duties under the license subject to the commissioner's authority to:
- 2957 (i) require a temporary licensee to have a suitable sponsor who:
- 2958 (A) is a licensee; and
- 2959 (B) assumes responsibility for all acts of the temporary licensee; or
- 2960 (ii) impose other requirements that are:
- 2961 (A) designed to protect the insureds and the public; and
- 2962 (B) similar to the condition described in Subsection (4)(a)(i).
- 2963 (b) A trustee appointed under Subsection (2) shall be appointed and perform the
- 2964 trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through
- 2965 (vi).
- 2966 (i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to
- 2967 perform the services required by the trustor's clients.
- 2968 (B) When possible, the commissioner shall appoint a trustee who is no longer actively
- 2969 engaged on the trustee's own behalf in business as a licensee.
- 2970 (C) The commissioner shall only select a person to act as trustee who is trustworthy

2971 and competent to perform the necessary services.

2972 (ii) (A) If the deceased~~[, disabled]~~ person, person with a disability, or unlicensed
2973 person for whom the trustee is acting was a producer, the insurers through which the former
2974 producer's business was written shall cooperate with the trustee in allowing the trustee to
2975 service the policies written through the insurer.

2976 (B) The trustee shall abide by the terms of the agency agreement between the former
2977 producer and the issuing insurer, except that terms in those agreements terminating the
2978 agreement upon the death, disability, or license termination of the former producer do not bar
2979 the trustee from continuing to act under the agreement.

2980 (iii) (A) The commissioner shall set the trustee's compensation, which:

2981 (I) may be stated in terms of a percentage of commissions; and

2982 (II) shall be equitable.

2983 (B) The compensation shall be paid exclusively from:

2984 (I) the commissions generated by the former licensee's insurance accounts serviced by
2985 the trustee; and

2986 (II) other funds the former licensee or the licensee's successor in interest agree to pay.

2987 (C) The trustee has no special priority to commissions over the former licensee's
2988 creditors.

2989 (iv) (A) The commissioner or the state may not be held liable for errors or omissions
2990 of:

2991 (I) the former licensee; or

2992 (II) the trustee.

2993 (B) The trustee may not be held liable for errors and omissions that were caused in any
2994 material way by the negligence of the former licensee.

2995 (C) The trustee may be held liable for errors and omissions which arise solely from the
2996 trustee's negligence.

2997 (D) The trustee's compensation level shall be sufficient to allow the trustee to purchase
2998 errors and omissions coverage, if that coverage is not provided the trustee by:

2999 (I) the former licensee; or

3000 (II) the licensee's successor in interest.

3001 (v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's

3002 clients, either directly or indirectly.

3003 (B) The trustee may not purchase the accounts or expiration lists of the former
3004 licensee, unless the commissioner expressly ratifies the terms of the sale.

3005 (C) The commissioner may adopt rules that:

3006 (I) further define the trustee's fiduciary duties; and

3007 (II) explain how the trustee is to carry out the trustee's responsibilities.

3008 (vi) (A) The trust may be terminated by:

3009 (I) the commissioner; or

3010 (II) the person that requested the trust be established.

3011 (B) The trust is terminated by written notice being delivered to:

3012 (I) the trustee; and

3013 (II) the commissioner.

3014 (5) (a) The commissioner may by order:

3015 (i) limit the authority of any temporary licensee or trustee in any way the commissioner
3016 considers necessary to protect insureds and the public; and

3017 (ii) revoke a temporary license or trustee's appointment if the commissioner finds that
3018 the insureds or the public are endangered.

3019 (b) A temporary license or trustee's appointment may not continue after the owner or
3020 personal representative disposes of the business.

3021 Section 41. Section **31A-26-215** is amended to read:

3022 **31A-26-215. Temporary license -- Appointment of trustee for terminated**
3023 **licensee's business.**

3024 (1) (a) The commissioner may issue a temporary insurance adjuster license:

3025 (i) to a person listed in Subsection (1)(b):

3026 (A) if the commissioner considers that the temporary license is necessary:

3027 (I) for the servicing of an insurance business in the public interest; and

3028 (II) to provide continued service to the insureds who are being serviced in a
3029 circumstance described in Subsection (1)(b);

3030 (B) for a period not to exceed 180 days; and

3031 (C) without requiring an examination; or

3032 (ii) in any other circumstance:

3033 (A) if the commissioner considers the public interest will best be served by issuing the
3034 temporary license;

3035 (B) for a period not to exceed 180 days; and

3036 (C) without requiring an examination.

3037 (b) The commissioner may issue a temporary insurance producer license in accordance
3038 with Subsection (1)(a) to:

3039 (i) the surviving spouse or court-appointed personal representative of a licensed
3040 insurance adjuster who dies or [~~becomes mentally or physically disabled~~] acquires a mental or
3041 physical disability to allow adequate time for:

3042 (A) the sale of the insurance business owned by the adjuster;

3043 (B) recovery or return of the adjuster to the business; or

3044 (C) the training and licensing of new personnel to operate the adjuster's business;

3045 (ii) to a member or employee of a business entity licensed as an insurance adjuster
3046 upon the death or disability of an individual designated in:

3047 (A) the business entity application; or

3048 (B) the license; or

3049 (iii) the designee of a licensed insurance adjuster entering active service in the armed
3050 forces of the United States of America.

3051 (2) If a person's license is terminated under Section 31A-26-213, the commissioner
3052 may appoint a trustee to provide in the public interest continuing service to the insureds who
3053 procured insurance through the person whose license is terminated:

3054 (a) at the request of the person whose license is terminated; or

3055 (b) upon the commissioner's own initiative.

3056 (3) This section does not apply if the deceased or disabled adjuster has not owned or
3057 does not own an ownership interest in the accounts and associated expiration lists that were
3058 previously serviced by the adjuster.

3059 (4) (a) A person issued a temporary license under Subsection (1) receives the license
3060 and shall perform the duties under the license subject to the commissioner's authority to:

3061 (i) require a temporary licensee to have a suitable sponsor who:

3062 (A) is a licensed producer; and

3063 (B) assumes responsibility for all acts of the temporary licensee; or

- 3064 (ii) impose other requirements that are:
3065 (A) designed to protect the insureds and the public; and
3066 (B) similar to the condition described in Subsection (4)(a)(i).
3067 (b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and
3068 perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through
3069 (xv).
3070 (i) A trustee appointed under this section shall be licensed under this chapter to
3071 perform the services required by the trustor's clients.
3072 (ii) When possible, the commissioner shall appoint a trustee who is no longer actively
3073 engaged on the trustee's own behalf in business as an adjuster.
3074 (iii) The commissioner shall only select a person to act as trustee who is trustworthy
3075 and competent to perform the necessary services.
3076 (iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an
3077 associated adjuster, the insurers through or with which the former adjuster's business was
3078 associated shall cooperate with the trustee in allowing the trustee to service the claims
3079 associated with or through the insurer.
3080 (v) The trustee shall abide by the terms of any agreement between the former adjuster
3081 and the associated insurer, except that terms in those agreements terminating the agreement
3082 upon the death, disability, or license termination of the former agent do not bar the trustee from
3083 continuing to act under the agreement.
3084 (vi) The commissioner shall set the trustee's compensation which:
3085 (A) may be stated in terms of a percentage of commissions;
3086 (B) shall be equitable; and
3087 (C) paid exclusively from:
3088 (I) the commissions generated by the former adjuster's accounts serviced by the trustee;
3089 and
3090 (II) other funds the former adjuster or the former adjuster's successor in interest agree
3091 to pay.
3092 (vii) The trustee has no special priority to commissions over the former adjuster's
3093 creditors.
3094 (viii) The following may not be held liable for errors or omissions of the former

3095 adjuster or the trustee:

3096 (A) the commissioner; or

3097 (B) the state.

3098 (ix) The trustee may not be held liable for errors and omissions that were caused in any
3099 material way by the negligence of the former adjuster.

3100 (x) The trustee may be held liable for errors and omissions that arise solely from the
3101 trustee's negligence.

3102 (xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase
3103 errors and omissions coverage, if that coverage is not provided to the trustee by:

3104 (A) the former adjuster; or

3105 (B) the former adjuster's successor in interest.

3106 (xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's
3107 clients, either directly or indirectly.

3108 (xiii) The trustee may not purchase the accounts or expiration lists of the former
3109 adjuster, unless the commissioner expressly ratifies the terms of the sale.

3110 (xiv) The commissioner may adopt rules that:

3111 (A) further define the trustee's fiduciary duties; and

3112 (B) explain how the trustee is to carry out the trustee's responsibilities.

3113 (xv) The trust may be terminated by:

3114 (A) the commissioner; or

3115 (B) the person that requested the trust be established.

3116 (c) A person described in Subsection (4)(b)(xv)(B) shall terminate the trust by sending
3117 written notice to:

3118 (i) the trustee; and

3119 (ii) the commissioner.

3120 (5) (a) The commissioner may by order limit the authority of any temporary licensee or
3121 trustee in any way considered necessary to protect:

3122 (i) persons being serviced; and

3123 (ii) the public.

3124 (b) The commissioner may by order revoke a temporary license or trustee's
3125 appointment if the interest of persons being serviced or the public are endangered.

3126 (c) A temporary license or trustee's appointment may not continue after the owner or
3127 personal representative disposes of the business.

3128 Section 42. Section **31A-36-111** is amended to read:

3129 **31A-36-111. Prohibited acts.**

3130 (1) An owner may not enter into a life settlement at any time before the application or
3131 issuance of a policy.

3132 (2) An owner may not enter into a life settlement within two years after the date of
3133 issuance of the policy to which the life settlement relates unless the owner certifies to the life
3134 settlement provider that one of the following is satisfied:

3135 (a) the policy was issued upon the owner's exercise of conversion rights arising out of a
3136 group or individual policy if:

3137 (i) the total time covered under the conversion policy plus the time covered under the
3138 prior policy is at least 24 months; and

3139 (ii) the time covered under a group policy, calculated without regard to any change in
3140 insurance carriers, is continuous and under the same group sponsorship; or

3141 (b) the owner submits to the life settlement provider independent evidence that within
3142 the two-year period:

3143 (i) the owner or insured is terminally ill;

3144 (ii) the owner or insured is chronically ill;

3145 (iii) the spouse of the owner dies;

3146 (iv) the owner divorces the owner's spouse;

3147 (v) the owner retires from full-time employment;

3148 (vi) the owner [~~becomes physically or mentally disabled~~] acquires a physical or mental
3149 disability and a physician determines that the disability precludes the owner from maintaining
3150 full-time employment;

3151 (vii) a final judgment or order is entered or issued by a court of competent jurisdiction,
3152 on the application of a creditor of the owner:

3153 (A) adjudging the owner bankrupt or insolvent;

3154 (B) approving a petition for reorganization of the owner; or

3155 (C) appointing a receiver, trustee, or liquidator for all or a substantial part of the
3156 owner's assets;

3157 (viii) the owner experiences a significant decrease in income that is unexpected and
3158 impairs the owner's reasonable ability to pay the policy premium; or

3159 (ix) the owner or insured disposes of ownership interests in a closely held corporation,
3160 pursuant to the terms of a buyout or other similar agreement in effect at the time the policy is
3161 initially issued.

3162 (3) An insurer may not, as a condition of responding to a request for verification of
3163 coverage or effecting the transfer of a policy pursuant to a life settlement, require any of the
3164 following to sign a form, disclosure, consent, or waiver that is not filed with the commissioner
3165 for use in connection with a life settlement in this state:

3166 (a) an owner;

3167 (b) an insured;

3168 (c) a life settlement provider; or

3169 (d) a life settlement producer.

3170 (4) (a) Upon receipt of a properly completed request for change of ownership or
3171 beneficiary of a policy, an insurer shall respond in writing within 30 calendar days of the day of
3172 receipt with written acknowledgment:

3173 (i) confirming that the change is effective; or

3174 (ii) specifying the reasons why the requested change cannot be processed.

3175 (b) An insurer may not:

3176 (i) unreasonably delay effecting a change of ownership or beneficiary; and

3177 (ii) otherwise seek to interfere with a life settlement lawfully entered into in this state.

3178 (5) A person may not issue, solicit, or market the purchase of a policy for the primary
3179 purpose of or with a primary emphasis on settling the policy.

3180 (6) (a) Unless disclosed to an owner before the execution of a life settlement by the
3181 owner, a life settlement producer may not knowingly with respect to the life settlement solicit
3182 an offer from, effectuate the life settlement with, or make a sale to any of the following that is
3183 controlling, controlled by, or under common control with the life settlement producer:

3184 (i) a life settlement provider;

3185 (ii) a life settlement purchaser;

3186 (iii) a financing entity; or

3187 (iv) a related provider trust.

3188 (b) Unless disclosed to an owner before the execution of a life settlement by the owner,
3189 with respect to the life settlement, a life settlement provider may not knowingly enter into the
3190 life settlement with the owner, if, in connection with the life settlement, anything of value will
3191 be paid to a life settlement producer that is controlling, controlled by, or under common control
3192 with:

- 3193 (i) the life settlement provider;
3194 (ii) the life settlement purchaser;
3195 (iii) a financing entity; or
3196 (iv) a related provider trust.

3197 Section 43. Section **34-38-14** is amended to read:

3198 **34-38-14. Employee not a person with a disability.**

3199 An employee or prospective employee whose drug or alcohol test result is confirmed as
3200 positive in accordance with this chapter may not, because of those results alone, be defined as a
3201 person with a [~~disability~~] disability for purposes of Title 34A, Chapter 5, Utah
3202 Antidiscrimination Act.

3203 Section 44. Section **34-41-106** is amended to read:

3204 **34-41-106. Employee not a person with a disability.**

3205 An employee, volunteer, prospective employee, or prospective volunteer whose drug
3206 test results are verified or confirmed as positive in accordance with the provisions of this
3207 chapter shall not, by virtue of those results alone, be defined as [~~disabled~~] a person with a
3208 disability for purposes of:

- 3209 (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
3210 (2) the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 through 12213.

3211 Section 45. Section **34A-2-107** is amended to read:

3212 **34A-2-107. Appointment of workers' compensation advisory council --**
3213 **Composition -- Terms of members -- Duties -- Compensation.**

3214 (1) The commissioner shall appoint a workers' compensation advisory council
3215 composed of:

- 3216 (a) the following voting members:
3217 (i) five employer representatives; and
3218 (ii) five employee representatives; and

3219 (b) the following nonvoting members:

3220 (i) a representative of the Workers' Compensation Fund;

3221 (ii) a representative of a private insurance carrier;

3222 (iii) a representative of health care providers;

3223 (iv) the Utah insurance commissioner or the insurance commissioner's designee; and

3224 (v) the commissioner or the commissioner's designee.

3225 (2) Employers and employees shall consider nominating members of groups who

3226 historically may have been excluded from the council, such as women, minorities, and

3227 individuals with disabilities.

3228 (3) (a) Except as required by Subsection (3)(b), as terms of current council members

3229 expire, the commissioner shall appoint each new member or reappointed member to a two-year

3230 term beginning July 1 and ending June 30.

3231 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at

3232 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of

3233 council members are staggered so that approximately half of the council is appointed every two

3234 years.

3235 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall

3236 be appointed for the unexpired term.

3237 (b) The commissioner shall terminate the term of a council member who ceases to be

3238 representative as designated by the member's original appointment.

3239 (5) (a) The council shall confer at least quarterly for the purpose of advising the

3240 commission, the division, and the Legislature on:

3241 (i) the Utah workers' compensation and occupational disease laws;

3242 (ii) the administration of the laws described in Subsection (5)(a)(i);

3243 (iii) rules related to the laws described in Subsection (5)(a)(i); and

3244 (iv) advising the Legislature in accordance with Subsection (5)(b).

3245 (b) (i) The council and the commission shall jointly study during 2009 the premium

3246 assessment under Section 59-9-101 on an admitted insurer writing workers' compensation

3247 insurance in this state and on a self-insured employer under Section 34A-2-202 as to:

3248 (A) whether or not the premium assessment should be changed; or

3249 (B) whether or not changes should be made to how the premium assessment is used.

3250 (ii) The council and commission shall jointly report the results of the study described in
3251 this Subsection (5)(b) to the Business and Labor Interim Committee by no later than the 2009
3252 November interim meeting.

3253 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
3254 who ~~[are disabled]~~ acquire a disability because of an industrial injury or occupational disease
3255 the council shall:

3256 (a) offer advice on issues requested by:

3257 (i) the commission;

3258 (ii) the division; and

3259 (iii) the Legislature; and

3260 (b) make recommendations to:

3261 (i) the commission; and

3262 (ii) the division.

3263 (7) The commissioner or the commissioner's designee shall serve as the chair of the
3264 council and call the necessary meetings.

3265 (8) The commission shall provide staff support to the council.

3266 (9) A member may not receive compensation or benefits for the member's service, but
3267 may receive per diem and travel expenses in accordance with:

3268 (a) Section 63A-3-106;

3269 (b) Section 63A-3-107; and

3270 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
3271 63A-3-107.

3272 Section 46. Section **34A-2-413** is amended to read:

3273 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

3274 (1) (a) In the case of a permanent total disability resulting from an industrial accident
3275 or occupational disease, the employee shall receive compensation as outlined in this section.

3276 (b) To establish entitlement to permanent total disability compensation, the employee
3277 must prove by a preponderance of evidence that:

3278 (i) the employee sustained a significant impairment or combination of impairments as a
3279 result of the industrial accident or occupational disease that gives rise to the permanent total
3280 disability entitlement;

3281 (ii) the employee [~~is permanently totally disabled~~] has a permanent, total disability; and

3282 (iii) the industrial accident or occupational disease is the direct cause of the employee's
3283 permanent total disability.

3284 (c) To establish that an employee [~~is permanently totally disabled~~] has a permanent,
3285 total disability the employee must prove by a preponderance of the evidence that:

3286 (i) the employee is not gainfully employed;

3287 (ii) the employee has an impairment or combination of impairments that limit the
3288 employee's ability to do basic work activities;

3289 (iii) the industrial or occupationally caused impairment or combination of impairments
3290 prevent the employee from performing the essential functions of the work activities for which
3291 the employee has been qualified until the time of the industrial accident or occupational disease
3292 that is the basis for the employee's permanent total disability claim; and

3293 (iv) the employee cannot perform other work reasonably available, taking into
3294 consideration the employee's:

3295 (A) age;

3296 (B) education;

3297 (C) past work experience;

3298 (D) medical capacity; and

3299 (E) residual functional capacity.

3300 (d) Evidence of an employee's entitlement to disability benefits other than those
3301 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

3302 (i) may be presented to the commission;

3303 (ii) is not binding; and

3304 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
3305 Occupational Disease Act.

3306 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
3307 perform other work reasonably available, the following may not be considered:

3308 (i) whether the employee is incarcerated in a facility operated by or contracting with a
3309 federal, state, county, or municipal government to house a criminal offender in either a secure
3310 or nonsecure setting; or

3311 (ii) whether the employee is not legally eligible to be employed because of a reason

3312 unrelated to the impairment or combination of impairments.

3313 (2) For permanent total disability compensation during the initial 312-week
3314 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the
3315 injury, limited as follows:

3316 (a) compensation per week may not be more than 85% of the state average weekly
3317 wage at the time of the injury;

3318 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
3319 sum of \$45 per week and:

3320 (A) \$5 for a dependent spouse; and

3321 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four
3322 dependent minor children; and

3323 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

3324 (A) the maximum established in Subsection (2)(a); or

3325 (B) the average weekly wage of the employee at the time of the injury; and

3326 (c) after the initial 312 weeks, the minimum weekly compensation rate under
3327 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest
3328 dollar.

3329 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
3330 out of and in the course of the employee's employment on or before June 30, 1994.

3331 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
3332 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
3333 of injury.

3334 (b) The employer or its insurance carrier may not be required to pay compensation for
3335 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
3336 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
3337 payable over the initial 312 weeks at the applicable permanent total disability compensation
3338 rate under Subsection (2).

3339 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation
3340 described in Subsection (3)(b), reimburse the overpayment:

3341 (i) to the employer or its insurance carrier; and

3342 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

3343 (d) After an employee receives compensation from the employee's employer, its
3344 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities
3345 amounting to 312 weeks of compensation at the applicable permanent total disability
3346 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total
3347 disability compensation.

3348 (e) Employers' Reinsurance Fund payments shall commence immediately after the
3349 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section
3350 34A-2-703.

3351 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
3352 out of and in the course of the employee's employment on or after July 1, 1994.

3353 (a) The employer or its insurance carrier is liable for permanent total disability
3354 compensation.

3355 (b) The employer or its insurance carrier may not be required to pay compensation for
3356 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
3357 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
3358 payable over the initial 312 weeks at the applicable permanent total disability compensation
3359 rate under Subsection (2).

3360 (c) The employer or its insurance carrier may recoup the overpayment of compensation
3361 described in Subsection (4) by reasonably offsetting the overpayment against future liability
3362 paid before or after the initial 312 weeks.

3363 (5) (a) A finding by the commission of permanent total disability is not final, unless
3364 otherwise agreed to by the parties, until:

3365 (i) an administrative law judge reviews a summary of reemployment activities
3366 undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

3367 (ii) the employer or its insurance carrier submits to the administrative law judge:

3368 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
3369 designed to return the employee to gainful employment; or

3370 (B) notice that the employer or its insurance carrier will not submit a plan; and

3371 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
3372 otherwise stipulated, to:

3373 (A) consider evidence regarding rehabilitation; and

3374 (B) review any reemployment plan submitted by the employer or its insurance carrier
3375 under Subsection (5)(a)(ii).

3376 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
3377 law judge shall order:

3378 (i) the initiation of permanent total disability compensation payments to provide for the
3379 employee's subsistence; and

3380 (ii) the payment of any undisputed disability or medical benefits due the employee.

3381 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
3382 Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

3383 (d) The employer or its insurance carrier shall be given credit for any disability
3384 payments made under Subsection (5)(b) against its ultimate disability compensation liability
3385 under this chapter or Chapter 3, Utah Occupational Disease Act.

3386 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
3387 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
3388 Subsections (5)(e)(i) through (iii).

3389 (i) The plan may include, but not require an employee to pay for:

3390 (A) retraining;

3391 (B) education;

3392 (C) medical and disability compensation benefits;

3393 (D) job placement services; or

3394 (E) incentives calculated to facilitate reemployment.

3395 (ii) The plan shall include payment of reasonable disability compensation to provide
3396 for the employee's subsistence during the rehabilitation process.

3397 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
3398 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
3399 is cause for the administrative law judge on the administrative law judge's own motion to make
3400 a final decision of permanent total disability.

3401 (f) If a preponderance of the evidence shows that successful rehabilitation is not
3402 possible, the administrative law judge shall order that the employee be paid weekly permanent
3403 total disability compensation benefits.

3404 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as

3405 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an
3406 employee could immediately or without unreasonable delay return to work but for the
3407 following, an administrative law judge shall order that the employee be denied the payment of
3408 weekly permanent total disability compensation benefits:

3409 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
3410 municipal government to house a criminal offender in either a secure or nonsecure setting; or

3411 (ii) not being legally eligible to be employed because of a reason unrelated to the
3412 impairment or combination of impairments.

3413 (6) (a) The period of benefits commences on the date the employee [~~became~~
3414 ~~permanently totally disabled~~] acquired the permanent, total disability, as determined by a final
3415 order of the commission based on the facts and evidence, and ends:

3416 (i) with the death of the employee; or

3417 (ii) when the employee is capable of returning to regular, steady work.

3418 (b) An employer or its insurance carrier may provide or locate for a permanently totally
3419 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
3420 minimum wage, except that the employee may not be required to accept the work to the extent
3421 that it would disqualify the employee from Social Security disability benefits.

3422 (c) An employee shall:

3423 (i) fully cooperate in the placement and employment process; and

3424 (ii) accept the reasonable, medically appropriate, part-time work.

3425 (d) In a consecutive four-week period when an employee's gross income from the work
3426 provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce
3427 the employee's permanent total disability compensation by 50% of the employee's income in
3428 excess of \$500.

3429 (e) If a work opportunity is not provided by the employer or its insurance carrier, [~~a~~
3430 ~~permanently totally disabled employee~~] an employee with a permanent, total disability may
3431 obtain medically appropriate, part-time work subject to the offset provisions of Subsection
3432 (6)(d).

3433 (f) (i) The commission shall establish rules regarding the part-time work and offset.

3434 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part
3435 8, Adjudication.

- 3436 (g) The employer or its insurance carrier has the burden of proof to show that
3437 medically appropriate part-time work is available.
- 3438 (h) The administrative law judge may:
- 3439 (i) excuse an employee from participation in any work:
- 3440 (A) that would require the employee to undertake work exceeding the employee's:
- 3441 (I) medical capacity; or
- 3442 (II) residual functional capacity; or
- 3443 (B) for good cause; or
- 3444 (ii) allow the employer or its insurance carrier to reduce permanent total disability
3445 benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time
3446 work is offered, but the employee fails to fully cooperate.
- 3447 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but
3448 the employee has some loss of bodily function, the award shall be for permanent partial
3449 disability.
- 3450 (8) As determined by an administrative law judge, an employee is not entitled to
3451 disability compensation, unless the employee fully cooperates with any evaluation or
3452 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
3453 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
3454 if the administrative law judge finds that the employee fails to fully cooperate, unless the
3455 administrative law judge states specific findings on the record justifying dismissal with
3456 prejudice.
- 3457 (9) (a) The loss or permanent and complete loss of the use of the following constitutes
3458 total and permanent disability that is compensated according to this section:
- 3459 (i) both hands;
- 3460 (ii) both arms;
- 3461 (iii) both feet;
- 3462 (iv) both legs;
- 3463 (v) both eyes; or
- 3464 (vi) any combination of two body members described in this Subsection (9)(a).
- 3465 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
- 3466 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent

3467 total disability claim, except those based on Subsection (9), for which the insurer or
3468 self-insured employer had or has payment responsibility to determine whether the employee
3469 ~~[remains permanently totally disabled]~~ continues to have a permanent, total disability.

3470 (b) Reexamination may be conducted no more than once every three years after an
3471 award is final, unless good cause is shown by the employer or its insurance carrier to allow
3472 more frequent reexaminations.

3473 (c) The reexamination may include:

3474 (i) the review of medical records;

3475 (ii) employee submission to one or more reasonable medical evaluations;

3476 (iii) employee submission to one or more reasonable rehabilitation evaluations and
3477 retraining efforts;

3478 (iv) employee disclosure of Federal Income Tax Returns;

3479 (v) employee certification of compliance with Section 34A-2-110; and

3480 (vi) employee completion of one or more sworn affidavits or questionnaires approved
3481 by the division.

3482 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
3483 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
3484 diem as well as reasonable expert witness fees incurred by the employee in supporting the
3485 employee's claim for permanent total disability benefits at the time of reexamination.

3486 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
3487 permanent total disability finding, an administrative law judge may order the suspension of the
3488 employee's permanent total disability benefits until the employee cooperates with the
3489 reexamination.

3490 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
3491 reasonably raises the issue of an employee's continued entitlement to permanent total disability
3492 compensation benefits, an insurer or self-insured employer may petition the Division of
3493 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
3494 with the petition, documentation supporting the insurer's or self-insured employer's belief that
3495 the employee ~~[is]~~ no longer ~~[permanently totally disabled]~~ has a permanent, total disability.

3496 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined
3497 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a

3498 hearing.

3499 (iii) Evidence of an employee's participation in medically appropriate, part-time work
3500 may not be the sole basis for termination of an employee's permanent total disability
3501 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
3502 work under Subsection (6) may be considered in the reexamination or hearing with other
3503 evidence relating to the employee's status and condition.

3504 (g) In accordance with Section 34A-1-309, the administrative law judge may award
3505 reasonable attorney fees to an attorney retained by an employee to represent the employee's
3506 interests with respect to reexamination of the permanent total disability finding, except if the
3507 employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded
3508 shall be paid by the employer or its insurance carrier in addition to the permanent total
3509 disability compensation benefits due.

3510 (h) During the period of reexamination or adjudication, if the employee fully
3511 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
3512 continue to pay the permanent total disability compensation benefits due the employee.

3513 (11) If any provision of this section, or the application of any provision to any person
3514 or circumstance, is held invalid, the remainder of this section is given effect without the invalid
3515 provision or application.

3516 Section 47. Section **34A-2-703** is amended to read:

3517 **34A-2-703. Payments from Employers' Reinsurance Fund.**

3518 If an employee, who has at least a 10% whole person permanent impairment from any
3519 cause or origin, subsequently incurs an additional impairment by an accident arising out of and
3520 in the course of the employee's employment during the period of July 1, 1988, to June 30,
3521 1994, inclusive, and if the additional impairment results in permanent total disability, the
3522 employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the
3523 payment of benefits as follows:

3524 (1) The employer or its insurance carrier is liable for the first \$20,000 of medical
3525 benefits and the initial 156 weeks of permanent total disability compensation as provided in
3526 this chapter or Chapter 3, Utah Occupational Disease Act.

3527 (2) Reasonable medical benefits in excess of the first \$20,000 shall be paid in the first
3528 instance by the employer or its insurance carrier. Then, as provided in Subsection (5), the

3529 Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for 50% of
3530 those expenses.

3531 (3) After the initial 156-week period under Subsection (1), permanent total disability
3532 compensation payable to an employee under this chapter or Chapter 3, Utah Occupational
3533 Disease Act, becomes the liability of and shall be paid by the Employers' Reinsurance Fund.

3534 (4) If it is determined that the employee is permanently and totally disabled, the
3535 employer or its insurance carrier shall be given credit for all prior payments of temporary total,
3536 temporary partial, and permanent partial disability compensation made as a result of the
3537 industrial accident. Any overpayment by the employer or its insurance carrier shall be
3538 reimbursed by the Employers' Reinsurance Fund under Subsection (5).

3539 (5) (a) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall
3540 reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of
3541 medical benefits and compensation paid to or on behalf of an employee. A request for
3542 Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence
3543 of payment of the medical or disability compensation for which the reimbursement is
3544 requested. Each request is subject to review as to reasonableness by the administrator. The
3545 administrator may determine the manner of reimbursement.

3546 (b) A decision of the administrator under Subsection (5)(a) may be appealed in
3547 accordance with Part 8, Adjudication.

3548 (6) If, at the time an employee is determined to [~~be permanently and totally disabled~~]
3549 have a permanent, total disability, the employee has other actionable workers' compensation
3550 claims, the employer or insurance carrier that is liable for the last industrial accident resulting
3551 in permanent total disability shall be liable for the benefits payable by the employer as provided
3552 in this section and Section 34A-2-413. The employee's entitlement to benefits for prior
3553 actionable claims shall then be determined separately on the facts of those claims. Any
3554 previous permanent partial disability arising out of those claims shall then be considered to be
3555 impairments that may give rise to Employers' Reinsurance Fund liability under this section.

3556 Section 48. Section **34A-2-902** is amended to read:

3557 **34A-2-902. Workers' compensation claims by emergency medical services**
3558 **providers -- Time limits.**

3559 (1) For all purposes of establishing a workers' compensation claim, the "date of

3560 accident" is presumed to be the date on which an emergency medical services provider first
3561 tests positive for a disease, as defined in Section 78B-8-401. However, for purposes of
3562 establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a
3563 positive test for a disease occurs within three months after termination of employment, the last
3564 date of employment is presumed to be the "date of accident."

3565 (2) The time limits prescribed by Section 34A-2-417 do not apply to an employee
3566 whose disability is due to a disease, so long as the employee who claims to have suffered a
3567 significant exposure in the service of his employer gives notice, as required by Section
3568 34A-3-108, of the "date of accident."

3569 (3) Any claim for workers' compensation benefits or medical expenses shall be filed
3570 with the Division of Adjudication of the Labor Commission within one year after the date on
3571 which the employee first [~~becomes disabled~~] acquires a disability or requires medical treatment
3572 for a disease, or within one year after the termination of employment as an emergency medical
3573 services provider, whichever occurs later.

3574 Section 49. Section **34A-2-903** is amended to read:

3575 **34A-2-903. Failure to be tested -- Time limit for death benefits.**

3576 (1) An emergency medical services provider who refuses or fails to be tested in
3577 accordance with Section 34A-2-901 is not entitled to any of the presumptions provided by this
3578 part.

3579 (2) Death benefits payable under Section 34A-2-702 are payable only if it can be
3580 established by competent evidence that death was a consequence of or result of the disease and,
3581 notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date
3582 the employee first [~~became disabled~~] acquired a disability or required medical treatment for the
3583 disease that caused [~~his~~] the employee's death.

3584 Section 50. Section **34A-3-104** is amended to read:

3585 **34A-3-104. Employer liability for compensation.**

3586 (1) Every employer is liable for the payment of disability and medical benefits to every
3587 employee who [~~becomes disabled~~] acquires a disability, or death benefits to the dependents of
3588 any employee who dies, by reason of an occupational disease under the terms of this chapter.

3589 (2) Compensation shall not be paid when the last day of injurious exposure of the
3590 employee to the hazards of the occupational disease occurred [~~prior to~~] before 1941.

3591 Section 51. Section 34A-3-107 is amended to read:

3592 **34A-3-107. Benefits -- Disability compensation, death, medical, hospital, and**
3593 **burial expenses -- Procedure and payments.**

3594 (1) The benefits to which [~~a disabled~~] an employee with a disability or the employee's
3595 dependents are entitled under this chapter shall be based upon the employee's average weekly
3596 wage at the time the cause of action arises and shall be computed in accordance with and in all
3597 ways shall be equivalent to the benefits for disability and death provided in Chapter 2,
3598 Workers' Compensation Act.

3599 (2) The [~~disabled~~] employee with a disability is entitled to medical, hospital, and burial
3600 expenses equivalent to those provided in Chapter 2.

3601 (3) The procedure and payment of benefits under this chapter shall be equivalent to and
3602 consistent with Chapter 2, including Section 34A-2-703.

3603 Section 52. Section 34A-4-101 is amended to read:

3604 **CHAPTER 4. HOSPITAL AND MEDICAL SERVICE FOR MINERS WITH A**
3605 **DISABILITY**

3606 **34A-4-101. Who entitled.**

3607 (1) Certain [~~disabled~~] miners with a disability meeting the requirements of Section
3608 34A-4-102 shall be entitled to, and shall receive, the free hospital and medical service provided
3609 for in this chapter.

3610 (2) Notwithstanding Subsection (1), in the event occupational diseases are made
3611 compensable under Chapter 2, Workers' Compensation Act, or 3, Utah Occupational Disease
3612 Act, no employer or insurance carrier shall be permitted to evade payment under Chapter 2 or 3
3613 by compelling a [~~disabled~~] miner with a disability to avail [~~himself~~] the miner of the benefits
3614 provided for in this chapter.

3615 Section 53. Section 34A-4-102 is amended to read:

3616 **34A-4-102. Application for benefits.**

3617 To be entitled to the free hospital and medical service provided for in Section
3618 34A-4-101, a [~~disabled~~] miner with a disability applying for benefits shall be required to
3619 establish under oath the following facts, which shall be conditions precedent to the granting of
3620 the free service provided for in this chapter:

3621 (1) that [~~he~~] the miner is and has been a resident of this state for a period of two years

3622 immediately preceding the filing of [his] the miner's application;

3623 (2) that [he] the miner has been employed in the mines of this state for a period of at
3624 least five years and that the disability from which [he] the miner is suffering and for which [he]
3625 the miner is in need of hospital and medical treatment is due to such employment;

3626 (3) that [he] the miner is physically incapable of entering remunerative employment
3627 and holding a job;

3628 (4) that [his] the miner's disability is such that hospital and medical attention is
3629 necessary; and

3630 (5) that [he] the miner is financially unable to secure and pay for hospital and medical
3631 service.

3632 Section 54. Section **34A-8a-102** is amended to read:

3633 **34A-8a-102. Definitions.**

3634 [~~2~~] (1) "Division" means the Division of Industrial Accidents.

3635 [~~3~~] (2) (a) "Gainful employment" means employment that:

- 3636 (i) is reasonably attainable in view of an industrial injury or occupational disease; and
3637 (ii) offers to an injured worker, as reasonably feasible, an opportunity for earnings.

3638 (b) Factors considered in determining gainful employment include an injured worker's:

- 3639 (i) education;
3640 (ii) experience; and
3641 (iii) physical and mental impairment and condition.

3642 [~~4~~] (3) "Initial written report" means a report required under Section 34A-8a-301.

3643 [~~5~~] (4) "Injured worker" means an employee who sustains an industrial injury or
3644 occupational disease for which benefits are provided under Chapter 2, Workers' Compensation
3645 Act, or Chapter 3, Utah Occupational Disease Act.

3646 [~~1~~ "~~Disabled injured worker~~"] (5) "Injured worker with a disability" means an injured
3647 worker who:

3648 (a) because of the injury or disease that is the basis of the employee being an injured
3649 worker:

3650 (i) is or will be unable to return to work in the injured worker's usual and customary
3651 occupation; or

3652 (ii) is unable to perform work for which the injured worker has previous training and

3653 experience; and

3654 (b) reasonably can be expected to attain gainful employment after an evaluation
3655 provided for in accordance with this chapter.

3656 (6) "Parties" means:

3657 (a) [~~a disabled injured worker~~] an injured worker with a disability;

3658 (b) the employer of the [~~disabled injured worker~~] injured worker with a disability;

3659 (c) the employer's workers' compensation insurance carrier; and

3660 (d) a rehabilitation or reemployment professional for the employer or the employer's
3661 workers' compensation insurance carrier.

3662 (7) "Reemployment plan" means a written:

3663 (a) description or rationale for the manner and means by which it is proposed [~~a~~
3664 ~~disabled injured worker~~] an injured worker with a disability may return to gainful employment;
3665 and

3666 (b) definition of the voluntary responsibilities of:

3667 (i) the [~~disabled injured worker~~] injured worker with a disability;

3668 (ii) the employer; and

3669 (iii) one or more other parties involved with the implementation of the reemployment
3670 plan.

3671 Section 55. Section **34A-8a-301** is amended to read:

3672 **34A-8a-301. Initial report on injured worker.**

3673 (1) An employer or the employer's workers' compensation insurance carrier shall
3674 prepare an initial written report assessing an injured worker's need or lack of need for
3675 vocational assistance in reemployment if:

3676 (a) it appears that the injured worker is or will be [~~a disabled injured worker~~] an injured
3677 worker with a disability; or

3678 (b) the period of the injured worker's temporary total disability compensation period
3679 exceeds 90 days.

3680 (2) (a) Subject to Subsection (2)(b), an employer or the employer's workers'
3681 compensation insurance carrier shall:

3682 (i) serve the initial written report required by Subsection (1) on the injured worker; and

3683 (ii) file the initial written report required by Subsection (1) with the division.

3684 (b) An employer or the employer's workers' compensation insurance carrier shall
3685 comply with Subsection (2)(a) by no later than 30 days after the earlier of the day on which:

3686 (i) it appears that the injured worker is or will be [~~a disabled injured worker~~] an injured
3687 worker with a disability; or

3688 (ii) the 90-day period described in Subsection (1)(b) ends.

3689 (3) With the initial written report required by Subsection (1), an employer or the
3690 employer's workers' compensation insurance carrier shall provide an injured worker
3691 information regarding reemployment.

3692 Section 56. Section **34A-8a-302** is amended to read:

3693 **34A-8a-302. Evaluation of injured worker -- Reemployment plan.**

3694 (1) Subject to the other provisions of this section, if an injured worker is [~~a disabled~~
3695 ~~injured worker~~] an injured worker with a disability, the employer or the employer's workers'
3696 compensation insurance carrier shall, within 10 days after the day on which the employer or
3697 workers' compensation insurance carrier serves the initial written report on the injured worker,
3698 refer the [~~disabled injured worker~~] injured worker with a disability to:

3699 (a) the Utah State Office of Rehabilitation; or

3700 (b) at the employer's or workers' compensation insurance carrier's option, a private
3701 rehabilitation or reemployment service.

3702 (2) An employer or the employer's workers' compensation insurance carrier shall make
3703 the referral required by Subsection (1) for the purpose of:

3704 (a) providing an evaluation; and

3705 (b) developing a reemployment plan.

3706 (3) The commission may authorize an employer or the employer's workers'
3707 compensation insurance carrier to:

3708 (a) not make a referral required by Subsection (1); or

3709 (b) make a referral during a different time period than required by Subsection (1).

3710 Section 57. Section **34A-8a-303** is amended to read:

3711 **34A-8a-303. Reemployment objectives.**

3712 (1) The commission through the division shall administer this chapter with the
3713 objective of assisting in returning [~~a disabled injured worker~~] an injured worker with a
3714 disability to gainful employment in the following order of employment priority:

- 3715 (a) same job, same employer;
3716 (b) modified job, same employer;
3717 (c) same job, new employer;
3718 (d) modified job, new employer;
3719 (e) new job, new employer; or
3720 (f) retraining in a new occupation.
3721 (2) Nothing in this chapter or its application is intended to:
3722 (a) modify or in any way affect an existing employee-employer relationship; or
3723 (b) provide an employee with a guarantee or right to employment or continued
3724 employment with an employer.

3725 Section 58. Section **39-1-59** is amended to read:

3726 **39-1-59. Compensation for injury or death.**

3727 If any officer or enlisted person of the National Guard is wounded, injured, or otherwise
3728 ~~[disabled]~~ acquires a disability, or is killed or dies of wounds or injuries received while serving
3729 on state active duty, under orders of competent authority and not as a result of ~~[his]~~ the person's
3730 own misconduct, the person, the surviving spouse, children, or any dependent relatives, shall
3731 receive from the state relief as the Legislature determines. However, in these cases the
3732 member, surviving spouse, children, or any dependent relatives, upon investigation by a board
3733 of inquiry appointed by the commander in chief, the findings and recommendations of which
3734 shall be filed with the state auditor for the action of the Board of Examiners, shall receive
3735 temporary compensation from the state, out of funds appropriated for the maintenance of the
3736 National Guard, as determined by the Board of Examiners until the next regular session of the
3737 Legislature. This compensation may not exceed the rates of pay provided for officers and
3738 enlisted persons in this chapter.

3739 Section 59. Section **41-6a-1011** is amended to read:

3740 **41-6a-1011. Pedestrian vehicles.**

3741 (1) As used in this section:

3742 (a) (i) "Pedestrian vehicle" means a self-propelled conveyance designed, manufactured,
3743 and intended for the exclusive use of a person with a physical disability.

3744 (ii) A "pedestrian vehicle" may not:

3745 (A) exceed 48 inches in width;

3746 (B) have an engine or motor with more than 300 cubic centimeters displacement or
3747 with more than 12 brake horsepower; and

3748 (C) be capable of developing a speed in excess of 30 miles per hour.

3749 (b) "Physical disability" means any bodily impairment which precludes a person from
3750 walking or otherwise moving about as a pedestrian.

3751 (2) (a) A pedestrian vehicle operated by a ~~[physically disabled]~~ person with a physical
3752 disability is exempt from vehicle registration, inspection, and operator license requirements.

3753 (b) Authority to operate a pedestrian vehicle on public highways or sidewalks shall be
3754 granted according to rules promulgated by the commissioner of public safety.

3755 (3) (a) A ~~[physically disabled]~~ person with a physical disability may operate a
3756 pedestrian vehicle with a motor of not more than .5 brake horsepower capable of developing a
3757 speed of not more than eight miles per hour:

3758 (i) on the sidewalk; and

3759 (ii) in all places where pedestrians are allowed.

3760 (b) A permit, license, registration, authority, application, or restriction may not be
3761 required or imposed on a ~~[physically disabled person operating]~~ person with a physical
3762 disability who operates a pedestrian vehicle under this Subsection (3).

3763 (c) The provisions of this Subsection (3) supercede the provision of Subsection (2)(b).
3764 Section 60. Section **41-22-2** is amended to read:

3765 **41-22-2. Definitions.**

3766 As used in this chapter:

3767 (1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by
3768 the Board of Parks and Recreation.

3769 (2) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width,
3770 having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure
3771 tires, having a seat designed to be straddled by the operator, and designed for or capable of
3772 travel over unimproved terrain.

3773 (3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in
3774 Subsection (2), (10), or (21), designed for or capable of travel over unimproved terrain.

3775 (b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to
3776 carry a ~~[disabled]~~ person with a disability, any vehicle not specifically designed for recreational

3777 use, or farm tractors as defined under Section 41-1a-102.

3778 (4) "Board" means the Board of Parks and Recreation.

3779 (5) "Cross-country" means across natural terrain and off an existing highway, road,
3780 route, or trail.

3781 (6) "Dealer" means a person engaged in the business of selling off-highway vehicles at
3782 wholesale or retail.

3783 (7) "Division" means the Division of Parks and Recreation.

3784 (8) "Low pressure tire" means any pneumatic tire six inches or more in width designed
3785 for use on wheels with rim diameter of 14 inches or less and utilizing an operating pressure of
3786 10 pounds per square inch or less as recommended by the vehicle manufacturer.

3787 (9) "Manufacturer" means a person engaged in the business of manufacturing
3788 off-highway vehicles.

3789 (10) "Motorcycle" means every motor vehicle having a saddle for the use of the
3790 operator and designed to travel on not more than two tires.

3791 (11) (a) "Motor vehicle" means every vehicle which is self-propelled.

3792 (b) "Motor vehicle" includes an off-highway vehicle.

3793 ~~[(13)]~~ (12) "Off-highway implement of husbandry" means every all-terrain type I
3794 vehicle, motorcycle, or snowmobile that is used by the owner or ~~[his]~~ the owner's agent for
3795 agricultural operations.

3796 ~~[(12)]~~ (13) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle,
3797 all-terrain type II vehicle, or motorcycle.

3798 (14) "Operate" means to control the movement of or otherwise use an off-highway
3799 vehicle.

3800 (15) "Operator" means the person who is in actual physical control of an off-highway
3801 vehicle.

3802 (16) "Organized user group" means an off-highway vehicle organization incorporated
3803 as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit
3804 Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

3805 (17) "Owner" means a person, other than a person with a security interest, having a
3806 property interest or title to an off-highway vehicle and entitled to the use and possession of that
3807 vehicle.

3808 (18) "Public land" means land owned or administered by any federal or state agency or
3809 any political subdivision of the state.

3810 (19) "Register" means the act of assigning a registration number to an off-highway
3811 vehicle.

3812 (20) "Roadway" is used as defined in Section 41-6a-102.

3813 (21) "Snowmobile" means any motor vehicle designed for travel on snow or ice and
3814 steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

3815 (22) "Street or highway" means the entire width between boundary lines of every way
3816 or place of whatever nature, when any part of it is open to the use of the public for vehicular
3817 travel.

3818 (23) "Street-legal all-terrain vehicle" or "street-legal ATV" has the same meaning as
3819 defined in Section 41-6a-102.

3820 Section 61. Section **49-11-403** is amended to read:

3821 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

3822 (1) A member, a participating employer, or a member and a participating employer
3823 jointly may purchase service credit equal to the period of the member's employment in the
3824 following:

3825 (a) United States federal employment;

3826 (b) employment in a private school based in the United States, if the member received
3827 an employer paid retirement benefit for the employment;

3828 (c) public employment in another state or territory of the United States which qualifies
3829 the member for membership in the public plan or system covering the employment, but only if
3830 the member does not qualify for any retirement benefits based on the employment;

3831 (d) forfeited service credit in this state if the member does not qualify for an allowance
3832 based on the service credit;

3833 (e) full-time public service while on an approved leave of absence;

3834 (f) the period of time for which disability benefits were paid if:

3835 (i) the member was receiving:

3836 (A) long-term disability benefits;

3837 (B) short-term disability benefits; or

3838 (C) worker's compensation disability benefits; and

3839 (ii) the member's employer had not entered into a benefit protection contract under
3840 Section 49-11-404 during the period the member [~~was disabled~~] had a disability due to sickness
3841 or accident;

3842 (g) employment covered by a Teachers Insurance and Annuity Association of America
3843 retirement plan if the member forfeits any retirement benefit from that retirement plan for the
3844 period of employment to be purchased under this Subsection (1)(g); or

3845 (h) employment in a charter school located within the state if the member forfeits any
3846 retirement benefit under any other retirement system or plan for the period of employment to be
3847 purchased under this Subsection (1)(h).

3848 (2) A member shall:

3849 (a) have at least four years of service credit before a purchase can be made under this
3850 section; and

3851 (b) forfeit service credit and any defined contribution balance based on employer
3852 contributions under any other retirement system or plan based on the period of employment for
3853 which service credit is being purchased.

3854 (3) (a) To purchase credit under this section, the member, a participating employer, or a
3855 member and a participating employer jointly shall make payment to the system under which the
3856 member is currently covered.

3857 (b) The amount of the payment shall be determined by the office based on a formula
3858 that is:

3859 (i) recommended by the actuary; and

3860 (ii) adopted by the board.

3861 (4) The purchase may be made through payroll deductions or through a lump sum
3862 deposit based upon the present value of future payments.

3863 (5) Total payment must be completed prior to the member's effective date of retirement
3864 or service credit will be prorated in accordance with the amount paid.

3865 (6) (a) For a purchase made before July 1, 2010, if any of the factors used to determine
3866 the cost of a service credit purchase change at or before the member's retirement date, the cost
3867 of the purchase shall be recalculated at the time of retirement.

3868 (b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the
3869 amount paid for the purchase, the member, a participating employer, or a member and a

3870 participating employer jointly may:

3871 (i) pay the increased cost, plus interest, to receive the full amount of service credit; or

3872 (ii) not pay the increased cost and have the purchased service credit prorated.

3873 (c) For a purchase made on or after July 1, 2010:

3874 (i) the purchase shall be made in accordance with rules:

3875 (A) adopted by the board based on recommendations by the board's actuary; and

3876 (B) in effect at the time the purchase is completed; and

3877 (ii) the cost of the service credit purchase shall not be recalculated at the time of

3878 retirement.

3879 (7) If the recalculated cost under Subsection (6)(a) is less than the amount paid for the

3880 purchase, the office shall refund the excess payment to the member or participating employer

3881 who paid for the purchase.

3882 (8) (a) The board may adopt rules under which a member may make the necessary
3883 payments to the office for purchases under this title as permitted by federal law.

3884 (b) The office may reject any payments if the office determines the tax status of the
3885 system, plans, or programs would be jeopardized by allowing the payment.

3886 (9) Account balances created under Section 49-22-303, 49-22-401, 49-23-302, or
3887 49-23-401 may not be used to purchase service credit for a benefit under Sections 49-22-304,
3888 49-22-305, 49-23-303, and 49-23-304.

3889 Section 62. Section **49-11-404** is amended to read:

3890 **49-11-404. Benefit protection contract authorized -- Annual report required.**

3891 (1) (a) A participating employer may establish a salary protection program under which
3892 its employees are paid during periods of disability.

3893 (b) If a salary protection program is established, a participating employer may enter
3894 into benefit protection contracts with the office.

3895 (c) A salary protection program shall:

3896 (i) pay benefits based on the [~~disabled member's~~] rate of compensation of the member
3897 with a disability at the time of disability;

3898 (ii) pay benefits over the period of the disability;

3899 (iii) not include settlement or lump sum payments of any type;

3900 (iv) be substantially equivalent to the long-term disability programs offered under

- 3901 Chapter 21, Public Employees' Long-Term Disability Act; and
- 3902 (v) comply with requirements adopted by the board.
- 3903 (2) A benefit protection contract shall allow:
- 3904 (a) the ~~[disabled]~~ member with a disability to be considered an active member in a
- 3905 system and continue to accrue service credit and salary credit based on the member's rate of pay
- 3906 in effect at the time disability commences;
- 3907 (b) the office to require participating employer contributions to be paid before granting
- 3908 service credit and salary credit to the member;
- 3909 (c) the ~~[disabled]~~ member with a disability to remain eligible during the contract period
- 3910 for any benefits provided by the system that covers the member; and
- 3911 (d) the benefit for the ~~[disabled]~~ member with a disability to be improved by the annual
- 3912 cost-of-living increase factor applied to retired members of the system that covered the member
- 3913 on the date the member is eligible to receive benefits under a benefit protection contract.
- 3914 (3) (a) The office shall establish the manner and times when employer contributions
- 3915 are paid.
- 3916 (b) A failure to make the required payments is cause for the office to cancel a contract.
- 3917 (c) Service credit and salary credit granted and accrued up to the time of cancellation
- 3918 may not be forfeited.
- 3919 (4) For an employee covered under Chapter 22, New Public Employees' Tier II
- 3920 Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II
- 3921 Contributory Retirement Act, a benefit protection contract shall allow:
- 3922 (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier
- 3923 II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:
- 3924 (i) the ~~[disabled]~~ member with a disability to be considered an active member in a
- 3925 system and continue to accrue service credit and salary credit based on the member's rate of pay
- 3926 in effect at the time disability commences;
- 3927 (ii) the office to require participating employer contributions to be paid before granting
- 3928 service credit and salary credit to the member;
- 3929 (iii) the ~~[disabled]~~ member with a disability to remain eligible during the contract
- 3930 period for any benefits provided by the system that covers the member; and
- 3931 (iv) the benefit for the ~~[disabled]~~ member with a disability to be improved by the

3932 annual cost-of-living increase factor applied to retired members of the system that covered the
3933 member on the date the member is eligible to receive benefits under a benefit protection
3934 contract; and

3935 (b) for the defined contribution portion for a member covered under Chapter 22, Part 3,
3936 Tier II Hybrid Retirement System or Chapter 23, Part 3, Tier II Hybrid Retirement System or
3937 for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan or Chapter
3938 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to
3939 continue making the nonelective contributions on behalf of the [~~disabled~~] member with a
3940 disability or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1),
3941 49-23-302(1)(a), or 49-23-401(1).

3942 (5) A participating employer that has entered into a benefit protection contract under
3943 this section shall submit an annual report to the office which identifies:

3944 (a) the employees receiving long-term disability benefits under policies initiated by the
3945 participating employer and approved under the benefit protection contract;

3946 (b) the employees that have applied for long-term disability benefits and who are
3947 waiting approval; and

3948 (c) the insurance carriers that are actively providing long-term disability benefits.

3949 (6) If an employer fails to provide the annual report required under Subsection (5), the
3950 benefits that would have accrued under the benefit protection contract shall be forfeited.

3951 (7) The board may adopt rules to implement and administer this section.

3952 Section 63. Section **49-12-601** is amended to read:

3953 **49-12-601. Disability retirement -- Medical examinations -- Reemployment of**
3954 **retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a**
3955 **disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit**
3956 **to medical examination.**

3957 (1) Only members of this system who became eligible for a disability retirement
3958 allowance before January 1, 1983, are covered under this section.

3959 (2) (a) The board may, upon the recommendation of the administrator, require any
3960 retirant who has been retired for disability and who has not attained the age of 60 years, to
3961 undergo a medical examination by a physician or surgeon, appointed by the board, at the place
3962 of residence of the retirant or other place mutually agreed upon.

3963 (b) Upon the basis of the examination, the board shall determine whether the [~~disabled~~]
3964 retirant with a disability is still incapacitated, physically or mentally, for service under this
3965 chapter.

3966 (c) If the board determines that the retirant is not incapacitated, the retirement
3967 allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the
3968 same class as that held by the retirant when retired for disability.

3969 (d) If any employing unit is unable to reinstate the retirant, the board shall continue the
3970 disability retirement allowance of the retirant until employment is available.

3971 (3) (a) If a [~~disabled~~] retirant with a disability under this system reenters covered
3972 service and is eligible for membership in the retirement system, the retirement allowance shall
3973 be cancelled and the retirant shall immediately become a member of the retirement system.

3974 (b) (i) The member's individual account shall be credited with an amount which is the
3975 actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the
3976 member's retirement allowance which was derived from the member's accumulated
3977 contributions.

3978 (ii) The amount credited may not exceed the amount of accumulated contributions
3979 standing at the time of retirement.

3980 (c) Each member shall receive credit for the service in the member's account at the
3981 time of retirement.

3982 (4) If the retirement allowance of any [~~disabled~~] retirant with a disability is cancelled
3983 for any cause other than reentry into service, the retirant shall be paid the accumulated
3984 contributions less the amounts prescribed by Subsection (6).

3985 (5) (a) If any member retired for disability engages in a gainful occupation prior to
3986 attaining age 60, the administrator shall reduce the amount of the retirement allowance to an
3987 amount which, when added to the compensation earned monthly by the retirant in that
3988 occupation, may not exceed the amount of the final average monthly salary on the basis of
3989 which the current service retirement allowance was determined.

3990 (b) If the earning capacity of the retirant is further altered, the administrator may
3991 further alter the retirement allowance as provided in this Subsection (5).

3992 (c) In no event, however, may the retirement benefit be reduced below that portion of
3993 the retirant's allowance derived from the retirant's own accumulated contributions.

3994 (d) When the retirant reaches age 60, the retirement allowance shall be made equal to
3995 the amount upon which the retirant was originally retired and may not again be modified for
3996 any cause.

3997 (6) (a) If any member who retired for disability under age 60, refuses to submit to a
3998 medical examination, the retirement allowance may be discontinued until the retirant
3999 withdraws that refusal.

4000 (b) If the refusal continues for one year the disability status may be cancelled and
4001 membership terminated.

4002 (c) (i) The retirant's accumulated contribution account shall be the actuarial equivalent
4003 on the date of the retirant's change of status, based on a disabled life, of that portion of the
4004 disability retirement allowance which was derived from the retirant's accumulated
4005 contributions.

4006 (ii) The amount credited may not exceed the amount of the retirant's accumulated
4007 contributions at the time of disability retirement.

4008 Section 64. Section **49-14-502** is amended to read:

4009 **49-14-502. Death of active member in Division B -- Payment of benefits.**

4010 (1) If an active member of this system enrolled in Division B under Section 49-14-301
4011 dies, benefits are payable as follows:

4012 (a) If the death is classified by the office as a line-of-duty death, the spouse at the time
4013 of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's
4014 final average monthly salary.

4015 (b) If the death is not classified by the office as a line-of-duty death, benefits are
4016 payable as follows:

4017 (i) If the member has accrued two or more years of public safety service credit at the
4018 time of death, the death is considered a line-of-duty death and the benefit shall be paid as
4019 provided under Subsection (1)(a).

4020 (ii) If the member has accrued less than two years of public safety service credit at the
4021 time of death, the spouse at the time of death shall receive a refund of the member's member
4022 contributions, plus 50% of the member's most recent 12 months' compensation.

4023 (c) (i) If the member has accrued two or more years of public safety service credit at
4024 the time of death, each of the member's unmarried children to age 18 or dependent unmarried

4025 [~~mentally or physically disabled~~] children with a mental or physical disability shall receive a
4026 monthly allowance of \$50.

4027 (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or
4028 as otherwise provided under Sections 49-11-609 and 49-11-610.

4029 (2) In the event of the death of both parents, the spouse's benefit shall be prorated and
4030 paid to each of the member's unmarried children to age 18.

4031 (3) If a benefit is not distributed under the previous subsections, and the member has
4032 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4033 (4) The combined annual payments made to the beneficiaries of any member under this
4034 section may not exceed 75% of the member's final average monthly salary.

4035 Section 65. Section **49-14-504** is amended to read:

4036 **49-14-504. Benefits payable upon death of retired member -- Enhanced benefit**
4037 **election -- Rulemaking.**

4038 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4039 spouse at the time of death of the retiree shall receive an allowance equal to 65% of the
4040 allowance that was being paid to the retiree at the time of death.

4041 (2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time
4042 of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance
4043 computed in accordance with Section 49-14-402.

4044 (b) If an election is made under Subsection (2)(a), the member's allowance shall be
4045 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4046 pay for the increased spousal death benefit above 65%.

4047 (3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall
4048 provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of
4049 an allowance computed in accordance with Section 49-14-402.

4050 (b) A retiree may elect to purchase the optional spousal death benefit until July 1,
4051 2010.

4052 (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be
4053 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4054 pay for the increased spousal death benefit above 65%.

4055 (d) The board shall make rules to administer the death benefit under this Subsection

4056 (3).

4057 (4) If the retiree retired solely under Division B and dies leaving unmarried children
4058 under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a
4059 mental or physical disability, the children shall qualify for a benefit as prescribed for children
4060 under Subsection 49-14-502(1)(c) which is payable on the first day of the month following the
4061 month in which the retiree died.

4062 Section 66. Section **49-15-502** is amended to read:

4063 **49-15-502. Death of active member in Division B -- Payment of benefits.**

4064 (1) If an active member of this system enrolled in Division B under Section 49-15-301
4065 dies, benefits are payable as follows:

4066 (a) If the death is classified by the office as a line-of-duty death, the spouse at the time
4067 of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's
4068 final average monthly salary.

4069 (b) If the death is not classified by the office as a line-of-duty death, and the member
4070 has accrued two or more years of public safety service credit at the time of death, the death is
4071 considered line-of-duty and the benefit shall be paid as provided under Subsection (1)(a).

4072 (c) If the death is not classified by the office as a line-of-duty death, and the member
4073 has accrued less than two years of public safety service credit at the time of death, the spouse at
4074 the time of death shall receive a refund of the member's member contributions, plus 50% of the
4075 member's most recent 12 months' compensation.

4076 (d) (i) If the member has accrued two or more years of public safety service credit at
4077 the time of death, each of the member's unmarried children to age 18 or dependent unmarried
4078 [~~mentally or physically disabled~~] children with a mental or physical disability shall receive an
4079 allowance of \$50.

4080 (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or
4081 as otherwise provided under Section 49-11-609 or 49-11-610.

4082 (2) In the event of the death of both parents, the spouse's benefit shall be prorated and
4083 paid to each of the member's unmarried children to age 18.

4084 (3) If a benefit is not distributed under the previous subsections, and the member has
4085 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4086 (4) The combined payments to beneficiaries of any member under this section may not

4087 exceed 75% of the member's final average monthly salary.

4088 Section 67. Section **49-15-504** is amended to read:

4089 **49-15-504. Benefits payable upon death of retired member -- Enhanced benefit**
4090 **election -- Rulemaking.**

4091 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4092 spouse at the time of death of the retiree shall receive an allowance equal to 65% of the
4093 allowance that was being paid to the retiree at the time of death.

4094 (2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time
4095 of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance
4096 computed in accordance with Section 49-15-402.

4097 (b) If an election is made under Subsection (2)(a), the member's allowance shall be
4098 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4099 pay for the increased spousal death benefit above 65%.

4100 (3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall
4101 provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of
4102 an allowance computed in accordance with Section 49-15-402.

4103 (b) A retiree may elect to purchase the optional spousal death benefit until July 1,
4104 2010.

4105 (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be
4106 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4107 pay for the increased spousal death benefit above 65%.

4108 (d) The board shall make rules to administer the death benefit under this Subsection
4109 (3).

4110 (4) If the retiree retired solely under Division B and dies leaving unmarried children
4111 under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a
4112 mental or physical disability, the children shall qualify for a benefit as prescribed under
4113 Subsection 49-15-502(1)(d) which is payable on the first day of the month following the month
4114 in which the retiree died.

4115 Section 68. Section **49-16-201** is amended to read:

4116 **49-16-201. System membership -- Eligibility.**

4117 (1) A firefighter service employee who performs firefighter service for an employer

4118 participating in this system is eligible for service credit in this system upon the earliest of:

4119 (a) July 1, 1971, if the firefighter service employee was employed by the participating
4120 employer on July 1, 1971, and the participating employer was participating in this system on
4121 that date;

4122 (b) the date the participating employer begins participating in this system if the
4123 firefighter service employee was employed by the participating employer on that date; or

4124 (c) the date the firefighter service employee is hired to perform firefighter services for a
4125 participating employer, if the firefighter initially enters employment before July 1, 2011.

4126 (2) (a) (i) A participating employer that has public safety service and firefighter service
4127 employees that require cross-training and duty shall enroll the dual purpose employees in the
4128 system in which the greatest amount of time is actually worked.

4129 (ii) The employees shall either be full-time public safety service or full-time firefighter
4130 service employees of the participating employer.

4131 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to
4132 another, the participating employer shall receive written permission from the office.

4133 (ii) The office may request documentation to verify the appropriateness of the transfer.

4134 (3) (a) A person hired by a regularly constituted fire department on or after July 1,
4135 1971, who does not perform firefighter service is not eligible for service credit in this system.

4136 (b) The nonfirefighter service employee shall become a member of the system for
4137 which the nonfirefighter service employee qualifies for service credit.

4138 (c) The service credit exclusion under this Subsection (3) may not be interpreted to
4139 prohibit the assignment of a [~~disabled or partially disabled~~] firefighter with a disability or
4140 partial disability to a nonfirefighter service position.

4141 (d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for
4142 service credit in this system.

4143 (4) An allowance or other benefit may not be granted under this system that is based
4144 upon the same service for benefits received under some other system.

4145 (5) Service as a volunteer firefighter is not eligible for service credit in this system.

4146 (6) An employer that maintains a regularly constituted fire department is eligible to
4147 participate in this system.

4148 (7) Beginning July 1, 2011, a person initially entering employment with a participating

4149 employer may not participate in this system.

4150 Section 69. Section **49-16-502** is amended to read:

4151 **49-16-502. Death of active member in Division B -- Payment of benefits.**

4152 (1) If an active member of this system enrolled in Division B under Section 49-16-301
4153 dies, benefits are payable as follows:

4154 (a) If the death is classified by the office as a line-of-duty death, benefits are payable as
4155 follows:

4156 (i) If the member has accrued less than 20 years of firefighter service credit, the spouse
4157 at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the
4158 member's final average monthly salary.

4159 (ii) If the member has accrued 20 or more years of firefighter service credit, the
4160 member shall be considered to have retired with an allowance calculated under Subsection
4161 49-16-402 and the spouse at the time of death shall receive the death benefit payable to a
4162 spouse under Section 49-16-504.

4163 (b) If the death is not classified by the office as a line-of-duty death, the benefits are
4164 payable as follows:

4165 (i) If the member has accrued five or more years of firefighter service credit, the death
4166 is considered line-of-duty and the same benefits are payable as established under Subsection
4167 (1)(a).

4168 (ii) If the member has accrued less than five years of firefighter service credit, the
4169 spouse at the time of death shall receive a refund of the member's contributions, plus 50% of
4170 the member's most recent 12 months compensation.

4171 (c) If the member has accrued five or more years of firefighter service credit, the
4172 member's unmarried children until they reach age 21 or dependent unmarried [~~mentally or~~
4173 ~~physically disabled~~] children with a mental or physical disability, shall receive a monthly
4174 allowance of \$75.

4175 (2) (a) In the event of the death of the member and spouse, the spouse's benefits are
4176 equally divided and paid to each unmarried child until the child reaches age 21.

4177 (b) The payments shall be made to the surviving parent or duly appointed guardian or
4178 as provided under Sections 49-11-609 and 49-11-610.

4179 (3) If a benefit is not distributed under the previous subsections, and the member has

4180 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4181 (4) The combined monthly payments made to the beneficiaries of any member under
4182 this section may not exceed 75% of the member's final average monthly salary.

4183 Section 70. Section **49-16-504** is amended to read:

4184 **49-16-504. Benefits payable upon death of retired member.**

4185 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4186 spouse at the time of death shall receive an allowance equal to 75% of the allowance that was
4187 being paid to the retiree at the time of death.

4188 (2) If the retiree retired solely under Division B and dies leaving unmarried children
4189 under the age of 21 or dependent unmarried [~~mentally or physically disabled~~] children with a
4190 mental or physical disability, the children shall qualify for a benefit as prescribed under
4191 Subsection 49-16-502(1)(c) which is payable on the first day of the month following the month
4192 in which the retiree died.

4193 Section 71. Section **49-16-602** is amended to read:

4194 **49-16-602. Disability retirement -- Disability allowance eligibility -- Conversion to**
4195 **service retirement -- Examinations -- Reemployment.**

4196 (1) A member of this system who applies and is qualified for disability retirement shall
4197 receive a disability retirement benefit until the earlier of:

4198 (a) the date the member of this system [~~is no longer disabled~~] no longer has a
4199 disability;

4200 (b) the date the member of this system has accumulated 20 years of firefighter service
4201 credit, including years earned while [~~disabled~~] the member of this system had a disability; or

4202 (c) the date the member of this system has received disability retirement benefits for
4203 the following time periods:

4204 (i) if the member is under age 60 on the date of disability, the disability retirement
4205 benefit is payable until age 65;

4206 (ii) if the member is 60 or 61 years of age on the date of disability, the disability
4207 retirement benefit is payable for five years;

4208 (iii) if the member is 62 or 63 years of age on the date of disability, the disability
4209 retirement benefit is payable for four years;

4210 (iv) if the member is 64 or 65 years of age on the date of disability, the disability

4211 retirement benefit is payable for three years;

4212 (v) if the member is 66, 67, or 68 years of age on the date of disability, the disability
4213 retirement benefit is payable for two years; and

4214 (vi) if the member is 69 years of age or older on the date of disability, the disability
4215 retirement benefit is payable for one year.

4216 (2) (a) (i) The [disability] retiree with a disability shall receive service credit in this
4217 system during the period of disability.

4218 (ii) If the [disability] retiree with a disability is employed by a participating employer
4219 during the period of disability, the [disability] retiree with a disability may not receive service
4220 credit for that employment.

4221 (b) The disability retirement shall be converted to a service retirement at the time the
4222 disability retirement benefits terminate.

4223 (3) The office shall approve or disapprove applications for disability retirement
4224 benefits based upon:

4225 (a) the evaluation and recommendations of one or more treating physicians along with
4226 medical records relating to the condition;

4227 (b) the evaluation and recommendations of one or more independent physicians
4228 selected by the office; and

4229 (c) receipt of documentation by the office from the participating employer that the
4230 member is mentally or physically unable to perform firefighter service.

4231 (4) (a) A [disability] retiree with a disability who receives benefits under this section
4232 shall, upon request of the executive director, submit to a medical examination by one or more
4233 physicians as directed by the office.

4234 (b) If, after an examination, the examiners report that the [disability] retiree with a
4235 disability is physically and mentally able and capable of resuming firefighter service
4236 employment, the [disability] retiree with a disability shall be reinstated by the participating
4237 employer for which the [disability] retiree with a disability last worked at the [disability
4238 retiree's] former classification and rank of the retiree with a disability, and the disability
4239 retirement benefit shall terminate.

4240 (c) A [disability] retiree with a disability may not be required to submit to an
4241 examination under this Subsection (4) more than once every year.

4242 (d) A [~~disability~~] retiree with a disability who returns to firefighter service employment
4243 with a participating employer in this system shall immediately begin accruing service credit
4244 that shall be added to that service credit that has been previously accrued, including service
4245 credit while disabled.

4246 (5) A [~~disability~~] retiree with a disability is not subject to medical examinations after
4247 reaching age 55.

4248 (6) Refusal or neglect of a member to submit to an examination as requested by the
4249 office either before or after a decision regarding disability benefits has been made is sufficient
4250 cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect
4251 continues for one year, the [~~member's or disability retiree's~~] rights of the member or retiree with
4252 a disability to disability retirement benefits may be revoked by the office.

4253 (7) (a) A [~~disability~~] retiree with a disability who receives benefits under this part shall
4254 file a sworn statement with the office on or before March 15 of each year for the first five years
4255 a [~~disability~~] retiree with a disability receives benefits.

4256 (b) The sworn statement shall indicate whether or not the [~~disability~~] retiree with a
4257 disability engaged in any employment during the preceding year and, if so, the amount of
4258 earnings received during the calendar year.

4259 (c) If the total amount received in one year by a [~~disability~~] retiree with a disability for
4260 disability retirement benefits and gross earnings from other employment exceeds 125% of the
4261 [~~disability retiree's~~] final average salary of the retiree with a disability, the office shall offset the
4262 disability retirement benefit paid the following year by the amount in excess of 125% of the
4263 [~~disability retiree's~~] final average salary of the retiree with a disability.

4264 (d) (i) If a [~~disability~~] retiree with a disability refuses or neglects to file a sworn
4265 statement as required under this Subsection (7), the executive director may suspend payment of
4266 any and all benefits pending receipt of the statement.

4267 (ii) Upon filing the statement, the [~~disability retiree's~~] payments of the retiree with a
4268 disability shall be resumed.

4269 (8) The disability retirement benefit shall be improved by the annual cost-of-living
4270 increase factor applied to retirees of the system that covered the firefighter service employee at
4271 the time of disability.

4272 (9) A line of duty disability allowance paid on or after January 1, 2002, under Section

4273 49-16-601 is exempt from taxation to the extent permitted under federal law.

4274 (10) (a) An active member of this system with five or more years of firefighter service
4275 credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease,
4276 lung disease, or respiratory tract disease.

4277 (b) An active member of this system who receives a line-of-duty disability benefit for
4278 more than six months due to violence or illness other than heart disease, lung disease, or
4279 respiratory tract disease, and then returns to paid firefighter service, is not eligible for a
4280 line-of-duty death or disability benefit due to those diseases for two years after the member
4281 returned to paid firefighter service unless clear and convincing evidence is presented that the
4282 heart, lung, or respiratory tract disease was directly a result of firefighter service.

4283 (11) Disability retirement benefits shall be considered an allowance for purposes of
4284 Section 49-11-701.

4285 Section 72. Section **49-21-102** is amended to read:

4286 **49-21-102. Definitions.**

4287 As used in this chapter:

4288 (1) "Date of disability" means the date on which a period of continuous disability
4289 commences, and may not commence on or before the last day of actual work.

4290 [~~(3)~~] (2) (a) "Eligible employee" means:

4291 (i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102,
4292 public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as
4293 defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this
4294 chapter, or the governor of the state; and

4295 (ii) an employee who is covered by a retirement program offered by the Teachers'
4296 Insurance and Annuity Association of America, if the employee's employer provides coverage
4297 under this chapter; and

4298 (b) "Eligible employee" does not include any employee that is exempt from coverage
4299 under Section 49-21-201.

4300 [~~(2)~~] (3) "Elimination period" means the three months at the beginning of each
4301 continuous period of total disability for which no benefit will be paid. The elimination period
4302 begins on the nearest first day of the month from the date of disability. The elimination period
4303 may include a one-time trial return to work period of less than 15 consecutive calendar days.

4304 (4) "Maximum benefit period" means the maximum period of time the monthly
4305 disability income benefit will be paid under Section 49-21-403 for any continuous period of
4306 total disability.

4307 (5) "Monthly disability benefit" means the monthly payments and accrual of service
4308 credit under Section 49-21-401.

4309 (6) "Objective medical impairment" means an impairment resulting from an injury or
4310 illness which is diagnosed by a physician and which is based on accepted objective medical
4311 tests or findings rather than subjective complaints.

4312 (7) "Physician" means a licensed physician.

4313 (8) "Regular monthly salary" means the amount certified by the participating employer
4314 as the monthly salary of the eligible employee, unless there is a discrepancy between the
4315 certified amount and the amount actually paid, in which case the office shall determine the
4316 regular monthly salary.

4317 (9) "Regular occupation" means either the primary duties performed by the eligible
4318 employee for the 12 months preceding the date of disability, or a permanent assignment of duty
4319 to the eligible employee.

4320 (10) "Rehabilitative employment" means any occupation or employment for wage or
4321 profit, for which the eligible employee is reasonably qualified to perform based on education,
4322 training, or experience.

4323 (11) (a) "Total disability" [~~or "totally disabled"~~] means the complete inability, due to
4324 objective medical impairment, whether physical or mental, to engage in the eligible employee's
4325 regular occupation during the elimination period and the first 24 months of disability benefits.

4326 (b) "Total disability" means, after the elimination period and the first 24 months of
4327 disability benefits, the complete inability, based solely on physical objective medical
4328 impairment, to engage in any gainful occupation which is reasonable, considering the eligible
4329 employee's education, training, and experience.

4330 Section 73. Section **49-21-401** is amended to read:

4331 **49-21-401. Disability benefits -- Application -- Eligibility.**

4332 (1) An eligible employee shall apply for long-term disability benefits under this chapter
4333 by:

4334 (a) completing an application form prepared by the office;

4335 (b) signing a consent form allowing the office access to the eligible employee's medical
4336 records; and

4337 (c) providing any documentation or information reasonably requested by the office.

4338 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the
4339 application may be made by a person who is:

4340 (i) the attorney for an eligible employee; or

4341 (ii) appointed as a conservator or guardian of the eligible employee.

4342 (b) A person described in Subsection (2)(a), may not make an application for a
4343 deceased employee.

4344 (3) Upon request by the office, the participating employer of the eligible employee
4345 shall provide to the office documentation and information concerning the eligible employee.

4346 (4) The office shall review all relevant information and determine whether or not the
4347 eligible employee ~~[is totally disabled]~~ has a total disability.

4348 (5) If the office determines that the eligible employee ~~[is totally disabled]~~ has a total
4349 disability due to accidental bodily injury or physical illness which is not the result of the
4350 performance of an employment duty, the eligible employee shall receive a monthly disability
4351 benefit equal to two-thirds of the eligible employee's regular monthly salary, for each month
4352 the total disability continues beyond the elimination period, not to exceed the maximum benefit
4353 period.

4354 (6) If the office determines that the eligible employee ~~[is totally disabled]~~ has a total
4355 disability due to psychiatric illness, the eligible employee shall receive:

4356 (a) a maximum of two years of monthly disability benefits equal to two-thirds of the
4357 eligible employee's regular monthly salary for each month the total disability continues beyond
4358 the elimination period;

4359 (b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses
4360 preauthorized by the office's consultants, paid during the period of monthly disability benefits;
4361 and

4362 (c) payment of monthly disability benefits according to contractual provisions for a
4363 period not to exceed five years if the eligible employee is institutionalized due to psychiatric
4364 illness.

4365 (7) If the office determines that the eligible employee ~~[is totally disabled]~~ has a total

4366 disability due to a physical injury resulting from external force or violence as a result of the
4367 performance of an employment duty, the eligible employee shall receive a monthly disability
4368 benefit equal to 100% of the eligible employee's regular monthly salary, for each month the
4369 total disability continues beyond the elimination period, not to exceed the maximum benefit
4370 period.

4371 (8) (a) Successive periods of disability are considered as a continuous period of
4372 disability if the period of disability:

4373 (i) results from the same or related causes;

4374 (ii) is separated by less than six months of continuous full-time work at the individual's
4375 usual place of employment; and

4376 (iii) commences while the individual is an eligible employee covered by this chapter.

4377 (b) The inability to work for a period of less than 15 consecutive calendar days is not
4378 considered as a period of disability.

4379 (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are
4380 considered as separate periods of disability.

4381 (9) The office may, at any time, have any eligible employee claiming to have a
4382 disability examined by a physician chosen by the office to determine if the eligible employee
4383 [~~is totally disabled~~] has a total disability.

4384 (10) A claim brought by an eligible employee for long-term disability benefits under
4385 the Public Employee's Long-Term Disability Program is barred if it is not commenced within
4386 one year from the eligible employee's date of disability, unless the office determines that under
4387 the surrounding facts and circumstances, the eligible employee's failure to comply with the
4388 time limitations was reasonable.

4389 (11) Medical or psychiatric conditions which existed prior to eligibility may not be a
4390 basis for disability benefits until the eligible employee has had one year of continuous
4391 eligibility in the Public Employees Long-Term Disability Program.

4392 (12) If there is a valid benefit protection contract, service credit shall accrue during the
4393 period of total disability, unless the disabled eligible employee is exempted from a system, or is
4394 otherwise ineligible for service credit.

4395 (13) Regardless of any medical evidence provided by the employee to support the
4396 application for disability, an employee is not eligible for long-term disability benefits during

4397 any period in which the employee:

4398 (a) makes a claim that the employee is able to work; or

4399 (b) has a pending action in a court or before any state or local administrative body in
4400 which the employee has made a claim that the employee is able to work.

4401 (14) Notwithstanding the provisions of Section 49-11-618, upon written request by an
4402 employer, information obtained under this part may, upon an order of a court or an
4403 administrative law judge, be released to an employer who is a party in an action under
4404 Subsection (13).

4405 Section 74. Section **49-21-403** is amended to read:

4406 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

4407 (1) An eligible employee covered by this chapter and eligible for service credit under a
4408 system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4,
4409 Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan,
4410 including an eligible employee who relinquishes rights to retirement benefits under Section
4411 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly
4412 disability benefit until the earlier of:

4413 (a) the date of the eligible employee's death;

4414 (b) the date the eligible employee [is] no longer [~~disabled~~] has a disability;

4415 (c) the date the eligible employee has accumulated:

4416 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
4417 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
4418 Act;

4419 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
4420 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

4421 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
4422 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
4423 Retirement Act;

4424 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
4425 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
4426 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

4427 (v) 25 years of service credit if the eligible employee is covered by the defined benefit

4428 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
4429 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

4430 (d) the date the eligible employee has received a monthly disability benefit for the
4431 following applicable time periods:

4432 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
4433 until age 65;

4434 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
4435 monthly disability benefit is payable for five years;

4436 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
4437 monthly disability benefit is payable for four years;

4438 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
4439 monthly disability benefit is payable for three years;

4440 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
4441 monthly disability benefit is payable for two years; and

4442 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
4443 monthly disability benefit is payable for one year.

4444 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
4445 for service credit under a system may retire under the requirements of the system which
4446 covered the eligible employee on the date of disability.

4447 (b) The final average salary used in the calculation of the allowance shall be based on
4448 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
4449 factor applied to retirees of the system which covered the eligible employee on the date of
4450 disability.

4451 (3) An eligible employee who is eligible for service credit in a system, but has
4452 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
4453 eligible employee would have received by being eligible for service credit in the system
4454 covering the eligible employee on the date of disability, except for the accrual of service credit,
4455 in accordance with this title.

4456 (4) An eligible employee receiving a monthly disability benefit who has service credit
4457 from two or more systems may not combine service credits under Section 49-11-405 in
4458 qualifying for retirement, unless the eligible employee would receive a greater allowance by

4459 combining the service credits.

4460 (5) A monthly disability benefit payable to an eligible employee who is not eligible for
4461 service credit under a system shall terminate at the earliest of:

4462 (a) the date the eligible employee would be eligible for an unreduced allowance;

4463 (b) the date the eligible employee has received a monthly disability benefit for the
4464 applicable time period as set forth in Subsection (1)(c); or

4465 (c) the date the eligible employee receives a reduced allowance.

4466 Section 75. Section **49-22-402** is amended to read:

4467 **49-22-402. Defined contribution distributions for members with a disability.**

4468 For a person [~~who is disabled and~~] with a disability who receives contributions under
4469 Subsection 49-11-404(4)(b), the [~~disabled~~] member with a disability may begin receiving
4470 distributions from the defined contributions made by the participating employer on behalf of
4471 the [~~disabled~~] member with a disability when the person would have been eligible to retire if
4472 the person was covered by the defined benefit portion of the Tier II hybrid retirement system
4473 under Part 3, Tier II Hybrid Retirement System.

4474 Section 76. Section **53-3-807** is amended to read:

4475 **53-3-807. Expiration -- Address and name change -- Extension for a person with**
4476 **a disability.**

4477 (1) (a) An identification card issued on or after July 1, 2006, expires on the birth date
4478 of the applicant in the fifth year following the issuance of the identification card.

4479 (b) A limited-term identification card expires on:

4480 (i) the expiration date of the period of time of the individual's authorized stay in the
4481 United States or on the birth date of the applicant in the fifth year following the issuance of the
4482 limited-term identification card, whichever is sooner; or

4483 (ii) on the birth date of the applicant in the first year following the year that the
4484 limited-term identification card was issued if there is no definite end to the individual's period
4485 of authorized stay.

4486 (2) If a person has applied for and received an identification card and subsequently
4487 moves from the address shown on the application or on the card, the person shall within 10
4488 days notify the division in a manner specified by the division of the person's new address.

4489 (3) If a person has applied for and received an identification card and subsequently

4490 changes the person's name under Title 42, Chapter 1, Change of Name, the person:

4491 (a) shall surrender the card to the division; and

4492 (b) may apply for a new card in the person's new name by:

4493 (i) furnishing proper documentation to the division as provided in Section 53-3-804;

4494 and

4495 (ii) paying the fee required under Section 53-3-105.

4496 (4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received

4497 an identification card and is currently required to register as a sex offender under Section

4498 77-27-21.5:

4499 (i) the person's identification card expires annually on the next birth date of the
4500 cardholder, on and after July 1, 2006;

4501 (ii) the person shall surrender the person's identification card to the division on or
4502 before the cardholder's next birth date beginning on July 1, 2006; and

4503 (iii) the person may apply for an identification card with an expiration date identified in
4504 Subsection (8)(~~b~~) by:

4505 (A) furnishing proper documentation to the division as provided in Section 53-3-804;

4506 and

4507 (B) paying the fee for an identification card required under Section 53-3-105.

4508 (b) Except as provided in Subsection (4)(c), if a person has applied for and received an
4509 identification card and is subsequently convicted of any offense listed in Subsection

4510 77-27-21.5(1)(n), the person shall surrender the card to the division on the person's next birth

4511 date following the conviction and may apply for a new card with an expiration date identified

4512 in Subsection (8)(~~b~~) by:

4513 (i) furnishing proper documentation to the division as provided in Section 53-3-804;

4514 and

4515 (ii) paying the fee required under Section 53-3-105.

4516 (c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b)

4517 because the person is in the custody of the Department of Corrections or Division of Juvenile

4518 Justice Services, confined in a correctional facility not operated by or under contract with the

4519 Department of Corrections, or committed to a state mental facility, shall comply with the

4520 provisions of Subsection (4)(a) or (b) within 10 days of being released from confinement.

4521 (5) A person older than 21 years of age with a disability, as defined under the
4522 Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on
4523 an identification card for five years if the person with a disability or an agent of the person with
4524 a disability:

4525 (a) requests that the division send the application form to obtain the extension or
4526 requests an application form in person at the division's offices;

4527 (b) completes the application;

4528 (c) certifies that the extension is for a person 21 years of age or older with a disability;

4529 and

4530 (d) returns the application to the division together with the identification card fee
4531 required under Section 53-3-105.

4532 (6) (a) (i) An identification card may only be extended once, except as prohibited under
4533 Subsection (6)(b).

4534 (ii) After an extension an application for an identification card must be applied for in
4535 person at the division's offices.

4536 (b) An identification card issued to a person required to register as a sex offender under
4537 Section 77-27-21.5 may not be extended.

4538 (7) An identification card issued prior to July 1, 2006 to a person 65 years of age or
4539 older does not expire, but continues in effect until the death of that person.

4540 (8) Notwithstanding the provisions of this section, an identification card expires on the
4541 birth date of the applicant in the first year following the year that the identification card was
4542 issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

4543 (9) A person who knowingly fails to surrender an identification card under Subsection
4544 (4) is guilty of a class A misdemeanor.

4545 Section 77. Section **53-10-208.1** is amended to read:

4546 **53-10-208.1. Magistrates and court clerks to supply information.**

4547 Every magistrate or clerk of a court responsible for court records in this state shall,
4548 within 30 days of the disposition and on forms and in the manner provided by the division,
4549 furnish the division with information pertaining to:

4550 (1) all dispositions of criminal matters, including:

4551 (a) guilty pleas;

- 4552 (b) convictions;
- 4553 (c) dismissals;
- 4554 (d) acquittals;
- 4555 (e) pleas held in abeyance;
- 4556 (f) judgments of not guilty by reason of insanity for a violation of:
- 4557 (i) a felony offense;
- 4558 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 4559 (iii) Title 76, Chapter 10, Part 5, Weapons;
- 4560 (g) judgments of guilty [~~and mentally ill~~] with a mental illness;
- 4561 (h) finding of mental incompetence to stand trial for a violation of:
- 4562 (i) a felony offense;
- 4563 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 4564 (iii) Title 76, Chapter 10, Part 5, Weapons; or
- 4565 (i) probations granted; and
- 4566 (2) orders of civil commitment under the terms of Section 62A-15-631;
- 4567 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or
- 4568 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303,
- 4569 within one day of the action and in a manner provided by the division; and
- 4570 (4) protective orders issued after notice and hearing, pursuant to:
- 4571 (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
- 4572 (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.
- 4573 Section 78. Section **53A-1a-704** is amended to read:
- 4574 **53A-1a-704. Scholarship program created -- Qualifications.**
- 4575 (1) The Carson Smith Scholarship Program is created to award scholarships to students
- 4576 with disabilities to attend a private school.
- 4577 (2) To qualify for a scholarship:
- 4578 (a) the student's custodial parent or legal guardian shall reside within Utah;
- 4579 (b) the student shall have one or more of the following disabilities:
- 4580 (i) [~~mental retardation~~] an intellectual disability;
- 4581 (ii) a hearing impairment;
- 4582 (iii) a speech or language impairment;

- 4583 (iv) a visual impairment;
- 4584 (v) a serious emotional disturbance;
- 4585 (vi) an orthopedic impairment;
- 4586 (vii) autism;
- 4587 (viii) traumatic brain injury;
- 4588 (ix) other health impairment;
- 4589 (x) specific learning disabilities; or
- 4590 (xi) a developmental delay, provided the student is at least five years of age, pursuant
- 4591 to Subsection (2)(c), and is younger than eight years of age;
- 4592 (c) the student shall be at least five years of age before September 2 of the year in
- 4593 which admission to a private school is sought and under 19 years of age on the last day of the
- 4594 school year as determined by the private school, or, if the individual has not graduated from
- 4595 high school, will be under 22 years of age on the last day of the school year as determined by
- 4596 the private school; and
- 4597 (d) except as provided in Subsection (3), the student shall:
- 4598 (i) be enrolled in a Utah public school in the school year prior to the school year the
- 4599 student will be enrolled in a private school;
- 4600 (ii) have an IEP; and
- 4601 (iii) have obtained acceptance for admission to an eligible private school.
- 4602 (3) The requirements of Subsection (2)(d) do not apply in the following circumstances:
- 4603 (a) the student is enrolled or has obtained acceptance for admission to an eligible
- 4604 private school that has previously served students with disabilities; and
- 4605 (b) an assessment team is able to readily determine with reasonable certainty:
- 4606 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
- 4607 special education services, if enrolled in a public school; and
- 4608 (ii) for the purpose of establishing the scholarship amount, the appropriate level of
- 4609 special education services which should be provided to the student.
- 4610 (4) (a) To receive a scholarship, the parent of a student shall submit an application for
- 4611 the scholarship to the school district within which the student is enrolled:
- 4612 (i) at least 60 days before the date of the first scholarship payment; and
- 4613 (ii) that contains an acknowledgment by the parent that the selected school is qualified

4614 and capable of providing the level of special education services required for the student.

4615 (b) The board may waive the 60-day application deadline.

4616 (5) (a) The scholarship application form shall contain the following statement:

4617 "I acknowledge that:

4618 (1) A private school may not provide the same level of special education services that
4619 are provided in a public school;

4620 (2) I will assume full financial responsibility for the education of my scholarship
4621 student if I accept this scholarship;

4622 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
4623 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
4624 U.S.C. Sec. 1400 et seq.; and

4625 (4) My child may return to a public school at any time."

4626 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
4627 for the education of the scholarship student.

4628 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
4629 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
4630 U.S.C. Sec. 1400 et seq.

4631 (d) The creation of the scholarship program or granting of a scholarship does not:

4632 (i) imply that a public school did not provide a free and appropriate public education
4633 for a student; or

4634 (ii) constitute a waiver or admission by the state.

4635 (6) (a) A scholarship shall remain in force for three years.

4636 (b) A scholarship shall be extended for an additional three years, if:

4637 (i) the student is evaluated by an assessment team; and

4638 (ii) the assessment team determines that the student would qualify for special education
4639 services, if enrolled in a public school.

4640 (c) The assessment team shall determine the appropriate level of special education
4641 services which should be provided to the student for the purpose of setting the scholarship
4642 amount.

4643 (d) A scholarship shall be extended for successive three-year periods as provided in
4644 Subsections (6)(a) and (b):

4645 (i) until the student graduates from high school; or

4646 (ii) if the student does not graduate from high school, until the student is age 22.

4647 (7) A student's parent, at any time, may remove the student from a private school and
4648 place the student in another eligible private school and retain the scholarship.

4649 (8) A scholarship student may not participate in a dual enrollment program pursuant to
4650 Section 53A-11-102.5.

4651 (9) The parents or guardians of a scholarship student have the authority to choose the
4652 private school that will best serve the interests and educational needs of that student, which
4653 may be a sectarian or nonsectarian school, and to direct the scholarship resources available for
4654 that student solely as a result of their genuine and independent private choices.

4655 (10) (a) A school district or charter school shall notify in writing the parents or
4656 guardians of students enrolled in the school district or charter school who have an IEP of the
4657 availability of a scholarship to attend a private school through the Carson Smith Scholarship
4658 Program.

4659 (b) The notice described under Subsection (10)(a) shall:

4660 (i) be provided no later than 30 days after the student initially qualifies for an IEP;

4661 (ii) be provided annually no later than February 1 to all students who have an IEP; and

4662 (iii) include the address of the Internet website maintained by the board that provides
4663 prospective applicants with detailed program information and application forms for the Carson
4664 Smith Scholarship Program.

4665 (c) A school district, school within a school district, or charter school that has an
4666 enrolled student who has an IEP shall post the address of the Internet website maintained by the
4667 board that provides prospective applicants with detailed program information and application
4668 forms for the Carson Smith Scholarship Program on the school district's or school's website, if
4669 the school district or school has one.

4670 Section 79. Section **53A-3-204** is amended to read:

4671 **53A-3-204. Duties of president.**

4672 (1) The president of each local school board shall preside at all meetings of the board,
4673 appoint all committees, and sign all warrants ordered by the board to be drawn upon the
4674 business administrator for school money.

4675 (2) If the president is absent or [~~disabled~~] acquires a disability, these duties are

4676 performed by the vice president.

4677 Section 80. Section **53A-9-103** is amended to read:

4678 **53A-9-103. Authorized components.**

4679 Career ladders may include the following components:

4680 (1) (a) An extended contract year for teachers, providing for additional paid
4681 nonteaching days beyond the regular school year for curriculum development and other
4682 professional development activities.

4683 (b) School boards may approve individual exceptions to the extended year contract.

4684 (2) At the option of the local school board, an extended contract year for teachers,
4685 providing for additional paid workdays beyond the regular school year for teaching
4686 assignments in programs for:

4687 (a) summer school;

4688 (b) remedial, ~~disabled,~~ education;

4689 (c) students with a disability;

4690 (d) specialized education;

4691 (e) applied technology;

4692 (f) gifted and talented; and

4693 (g) adult education [~~programs~~].

4694 (3) A fair and consistent procedure:

4695 (a) for selecting teachers who will be given additional responsibilities; and

4696 (b) which incorporates clearly stated job descriptions and qualifications for each level
4697 on the career ladder.

4698 (4) (a) A program of differentiated staffing that provides additional compensation and,
4699 as appropriate, additional extensions of the contract year, for those who assume additional
4700 instruction-related responsibilities such as:

4701 (i) assisting students and mentoring beginning teachers;

4702 (ii) curriculum and lesson plan development;

4703 (iii) helping established teachers improve their teaching skills;

4704 (iv) volunteer training;

4705 (v) planning;

4706 (vi) facilities and productivity improvements; and

4707 (vii) educational assignments directed at establishing positive relationships with the
4708 community, businesses, and parents.

4709 (b) Administrative and extracurricular activities are not considered additional
4710 instruction-related activities under this Subsection (4).

4711 (5) (a) A well defined program of evaluation and mentoring for beginning teachers,
4712 consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), designed to assist
4713 those teachers during provisional years of teaching to acquire and demonstrate the skills
4714 required of capable, successful teachers.

4715 (b) Continuation in teaching from year to year shall be contingent upon satisfactory
4716 teaching performance.

4717 (6) A clear and concise explanation of the evaluation system components, including the
4718 respective roles of parents, teachers, administrators, and the school board in the development of
4719 the evaluation system and provisions for frequent, comprehensive evaluations of teachers with
4720 less than three years' teaching experience and periodic evaluations of other teachers consistent
4721 with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

4722 (7) (a) A program of advancement on the career ladder contingent upon effective
4723 teaching performance, evidence of which may include formal evaluation and assessment of
4724 student progress.

4725 (b) Student progress shall play a significant role in teacher evaluation.

4726 (c) Other criteria may include formal preparation and successful teaching experience.

4727 (8) An assessment of implementation costs.

4728 (9) A plan for periodic review of the career ladder, including the makeup of the
4729 reviewing entity, procedures to be followed during review, and the time schedule for the
4730 review.

4731 Section 81. Section **53A-15-205** is amended to read:

4732 **53A-15-205. Disability Determination Services Advisory Council -- Membership**
4733 **-- Duties -- Requirements for DDDS.**

4734 (1) As used in this section, "council" means the Disability Determination Services
4735 Advisory Council created in Subsection (2).

4736 (2) There is created the Disability Determination Services Advisory Council to act as
4737 an advisory council to the State Board of Education regarding the Division of Disability

4738 Determination Services (DDDS) established under Chapter 24, Part 5, Division of Disability
4739 Determination Services.

4740 (3) The council is composed of the following members:

4741 (a) the administrator of DDDS;

4742 (b) a representative of the United States Department of Health and Human Services,
4743 Social Security Administration, appointed by the board; and

4744 (c) nine persons, appointed by the board in accordance with Subsections (5) and (6),
4745 who represent a cross section of:

4746 (i) persons with disabilities;

4747 (ii) advocates for persons with disabilities;

4748 (iii) health care providers;

4749 (iv) representatives of allied state and local agencies; and

4750 (v) representatives of the general public.

4751 (4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting
4752 members of the council.

4753 (5) In appointing the members described in Subsection (3)(c), the board shall:

4754 (a) solicit nominations from organizations and agencies that represent the interests of
4755 members described in that subsection; and

4756 (b) make every effort to create a balance in terms of geography, sex, race, ethnicity,
4757 and type of both mental and physical disabilities.

4758 (6) (a) In making initial appointments of members described in Subsection (3)(c), the
4759 board shall appoint three members for two-year terms, three members for four-year terms, and
4760 three members for six-year terms. All subsequent appointments are for four years.

4761 (b) The board shall fill any vacancy that occurs on the council for any reason by
4762 appointing a person for the unexpired term of the vacated member.

4763 (c) Council members are eligible for one reappointment and serve until their successors
4764 are appointed.

4765 (7) Five voting members of the council constitute a quorum. The action of a majority
4766 of a quorum represents the action of the council.

4767 (8) Members of the council serve without compensation but may be reimbursed for
4768 expenses incurred in the performance of their official duties.

4769 (9) (a) The council shall annually elect a chairperson from among the membership
4770 described, and shall adopt bylaws governing its activities.

4771 (b) The chairperson shall set the meeting agenda.

4772 (10) The council shall:

4773 (a) advise DDDS and the Social Security Administration regarding its practices and
4774 policies on the determination of claims for Social Security disability benefits;

4775 (b) participate in the development of new internal practices and procedures of DDDS
4776 and policies of the Social Security Administration regarding the evaluation of disability claims;

4777 (c) recommend changes to practices and policies to ensure that DDDS is responsive to
4778 ~~disabled~~ individuals with a disability;

4779 (d) review the DDDS budget to ensure that it is adequate to effectively evaluate
4780 disability claims and to meet the needs of persons with disabilities who have claims pending
4781 with DDDS; and

4782 (e) review and recommend changes to policies and practices of allied state and federal
4783 agencies, health care providers, and private community organizations.

4784 (11) The council shall annually report to the board, the governor, and the Legislative
4785 Health and Human Services Interim Committee regarding its activities.

4786 (12) (a) To assist the council in its duties, DDDS shall provide the necessary staff
4787 assistance to enable the council to make timely and effective recommendations.

4788 (b) Staff assistance may include:

4789 (i) distributing meeting agendas;

4790 (ii) advising the chairpersons of the council regarding relevant items for council
4791 discussion; and

4792 (iii) providing reports, documents, budgets, memorandums, statutes, and regulations
4793 regarding the management of DDDS.

4794 (c) Staff assistance shall include maintaining minutes.

4795 Section 82. Section **53A-17a-112** is amended to read:

4796 **53A-17a-112. Preschool special education appropriation -- Extended year**
4797 **program appropriation -- Appropriation for special education programs in state**
4798 **institutions.**

4799 (1) (a) Money appropriated to the State Board of Education for the preschool special

4800 education program shall be allocated to school districts to provide a free, appropriate public
4801 education to preschool students with a disability, ages three through five.

4802 (b) The money shall be distributed on the basis of [~~a school district's previous year~~
4803 ~~December 1 disabled preschool child count~~] the school district's count of preschool children
4804 with a disability for December 1 of the previous year, as mandated by federal law.

4805 (2) Money appropriated for the extended school year program for [~~the severely~~
4806 ~~disabled~~] children with a severe disability shall be limited to students with severe disabilities
4807 with education program goals identifying significant regression and recoupment disability as
4808 approved by the State Board of Education.

4809 (3) (a) Money appropriated for self-contained regular special education programs may
4810 not be used to supplement other school programs.

4811 (b) Money in any of the other restricted line item appropriations may not be reduced
4812 more than 2% to be used for purposes other than those specified by the appropriation, unless
4813 otherwise provided by law.

4814 (4) (a) The State Board of Education shall compute preschool funding by a factor of
4815 1.47 times the current December 1 child count of eligible preschool aged three, four, and
4816 five-year-olds times the WPU value, limited to 8% growth over the prior year December 1
4817 count.

4818 (b) The board shall develop guidelines to implement the funding formula for preschool
4819 special education, and establish prevalence limits for distribution of the money.

4820 Section 83. Section ~~53A-17a-127~~ is amended to read:

4821 **53A-17a-127. Eligibility for state-supported transportation -- Approved bus**
4822 **routes -- Additional local tax.**

4823 (1) A student eligible for state-supported transportation means:

4824 (a) a student enrolled in kindergarten through grade six who lives at least 1-1/2 miles
4825 from school;

4826 (b) a student enrolled in grades seven through 12 who lives at least two miles from
4827 school; and

4828 (c) a student enrolled in a special program offered by a school district and approved by
4829 the State Board of Education for trainable, motor, [~~multiple-disabled~~] multiple-disability, or
4830 other students with severe disabilities who are incapable of walking to school or where it is

4831 unsafe for students to walk because of their disabling condition, without reference to distance
4832 from school.

4833 (2) If a school district implements double sessions as an alternative to new building
4834 construction, with the approval of the State Board of Education, those affected elementary
4835 school students residing less than 1-1/2 miles from school may be transported one way to or
4836 from school because of safety factors relating to darkness or other hazardous conditions as
4837 determined by the local school board.

4838 (3) (a) The State Board of Education shall distribute transportation money to school
4839 districts based on:

- 4840 (i) an allowance per mile for approved bus routes;
- 4841 (ii) an allowance per hour for approved bus routes; and
- 4842 (iii) a minimum allocation for each school district eligible for transportation funding.

4843 (b) The State Board of Education shall distribute appropriated transportation funds
4844 based on the prior year's eligible transportation costs as legally reported under Subsection
4845 53A-17a-126(3).

4846 (c) The State Board of Education shall annually review the allowance per mile and the
4847 allowance per hour and adjust the allowances to reflect current economic conditions.

4848 (4) (a) Approved bus routes for funding purposes shall be determined on fall data
4849 collected by October 1.

4850 (b) Approved route funding shall be determined on the basis of the most efficient and
4851 economic routes.

4852 (5) A Transportation Advisory Committee with representation from local school
4853 superintendents, business officials, school district transportation supervisors, and the state
4854 superintendent's staff shall serve as a review committee for addressing school transportation
4855 needs, including recommended approved bus routes.

4856 (6) (a) A local school board may provide for the transportation of students regardless of
4857 the distance from school, from:

- 4858 (i) general funds of the district; and
- 4859 (ii) a tax rate not to exceed .0003 per dollar of taxable value imposed on the district.

4860 (b) A local school board may use revenue from the tax described in Subsection
4861 (6)(a)(ii) to pay for transporting students and for the replacement of school buses.

4862 (c) (i) If a local school board levies a tax under Subsection (6)(a)(ii) of at least .0002,
4863 the state may contribute an amount not to exceed 85% of the state average cost per mile,
4864 contingent upon the Legislature appropriating funds for a state contribution.

4865 (ii) The state superintendent's staff shall distribute the state contribution according to
4866 rules enacted by the State Board of Education.

4867 (d) (i) The amount of state guarantee money which a school district would otherwise be
4868 entitled to receive under Subsection (6)(c) may not be reduced for the sole reason that the
4869 district's levy is reduced as a consequence of changes in the certified tax rate under Section
4870 59-2-924 due to changes in property valuation.

4871 (ii) Subsection (6)(d)(i) applies for a period of two years following the change in the
4872 certified tax rate.

4873 Section 84. Section **53B-23-101** is amended to read:

4874 **CHAPTER 23. INSTRUCTIONAL MATERIALS FOR STUDENTS WITH A**
4875 **DISABILITY ACT**

4876 **53B-23-101. Title.**

4877 This chapter is known as the "Instructional Materials for [~~Disabled~~] Students with a
4878 Disability Act."

4879 Section 85. Section **54-1-1.6** is amended to read:

4880 **54-1-1.6. Pro tempore commissioner -- Appointment -- Qualifications.**

4881 (1) If a commissioner [~~is temporarily disabled~~] has a temporary disability or is
4882 disqualified from sitting as a commissioner, the governor may appoint a commissioner pro
4883 tempore according to the procedures and requirements of Section 67-1-1.5.

4884 (2) Any person appointed as a commissioner pro tempore shall possess the
4885 qualifications required for public service commissioners in Section 54-1-1.5 and have previous
4886 utility regulatory experience or other comparable professional experience.

4887 (3) The governor may appoint a retired or resigned public service commissioner as a
4888 commissioner pro tempore in order to render findings, orders, or decisions on matters which
4889 the retired or resigned commissioner had fully heard before the commissioner's retirement or
4890 resignation.

4891 Section 86. Section **57-21-5** is amended to read:

4892 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**

4893 **enumerated.**

4894 (1) It is a discriminatory housing practice to do any of the following because of a
4895 person's race, color, religion, sex, national origin, familial status, source of income, or
4896 disability:

4897 (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the
4898 sale or rental, or otherwise deny or make unavailable any dwelling from any person;

4899 (b) discriminate against any person in the terms, conditions, or privileges of the sale or
4900 rental of any dwelling or in providing facilities or services in connection with the dwelling; or

4901 (c) represent to any person that any dwelling is not available for inspection, sale, or
4902 rental when in fact the dwelling is available.

4903 (2) It is a discriminatory housing practice to make a representation orally or in writing
4904 or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or
4905 posted any notice, statement, or advertisement, or to use any application form for the sale or
4906 rental of a dwelling, that directly or indirectly expresses any preference, limitation, or
4907 discrimination based on race, color, religion, sex, national origin, familial status, source of
4908 income, or disability, or expresses any intent to make any such preference, limitation, or
4909 discrimination.

4910 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit, any
4911 person to buy, sell, or rent any dwelling by making representations about the entry or
4912 prospective entry into the neighborhood of persons of a particular race, color, religion, sex,
4913 national origin, familial status, source of income, or disability.

4914 (4) A discriminatory housing practice includes:

4915 (a) a refusal to permit, at the expense of the [~~disabled~~] person with a disability,
4916 reasonable modifications of existing premises occupied or to be occupied by the person if the
4917 modifications are necessary to afford that person full enjoyment of the premises, except that in
4918 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for
4919 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to
4920 the condition that existed before the modification, reasonable wear and tear excepted;

4921 (b) a refusal to make reasonable accommodations in rules, policies, practices, or
4922 services when the accommodations may be necessary to afford the person equal opportunity to
4923 use and enjoy a dwelling; and

4924 (c) in connection with the design and construction of covered multifamily dwellings for
4925 first occupancy after March 13, 1991, a failure to design and construct those dwellings in a
4926 manner that:

4927 (i) the dwellings have at least one building entrance on an accessible route, unless it is
4928 impracticable to have one because of the terrain or unusual characteristics of the site; and

4929 (ii) with respect to dwellings with a building entrance on an accessible route:

4930 (A) the public use and common use portions of the dwelling are readily accessible to
4931 and usable by [~~disabled persons~~] a person with a disability;

4932 (B) all the doors designed to allow passage into and within the dwellings are
4933 sufficiently wide to allow passage by [~~disabled persons in wheelchairs~~] a person with a
4934 disability who is in a wheelchair; and

4935 (C) all premises within these dwellings contain the following features of adaptive
4936 design:

4937 (I) an accessible route into and through the dwelling;

4938 (II) light switches, electrical outlets, thermostats, and other environmental controls in
4939 accessible locations;

4940 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

4941 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver
4942 about and use the space.

4943 (5) This section also applies to discriminatory housing practices because of race, color,
4944 religion, sex, national origin, familial status, source of income, or disability based upon a
4945 person's association with another person.

4946 Section 87. Section **58-15-2** is amended to read:

4947 **58-15-2. Definitions.**

4948 In addition to the definitions in Section 58-1-102, as used in this chapter:

4949 (1) "Administrator" means a person who is charged with the general administration of a
4950 health facility, regardless of whether that person has an ownership interest in the facility and
4951 whether his functions and duties are shared with one or more persons.

4952 (2) "Board" means the Health Facility Administrators Licensing Board created in
4953 Section 58-15-3.

4954 (3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an

4955 intermediate care facility for [~~the mentally retarded~~] people with an intellectual disability.

4956 (4) "Intermediate care facility" means an institution which provides, on a regular basis,
4957 health care and services to persons who do not require the degree of care and treatment a
4958 hospital or skilled nursing facility provide, but who require health care and services in addition
4959 to room and board.

4960 (5) "Intermediate care facility for [~~the mentally retarded~~]" people with an intellectual
4961 disability" means an institution which provides, on a regular basis, health-related care and
4962 service to mentally retarded individuals or persons with related conditions, who do not require
4963 the degree of care and treatment a hospital or skilled nursing facility provide, but who require
4964 health-related care and services above the need for room and board.

4965 (6) "Skilled nursing facility" means an institution primarily providing inpatients with
4966 skilled nursing care and related services on a continuing basis for patients who require mental,
4967 medical, or nursing care, or service for the rehabilitation of [~~injured, disabled, or sick persons~~]
4968 an injured person, a sick person, or a person with a disability.

4969 (7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further
4970 defined by rule includes:

4971 (a) intentionally filing a false report or record, intentionally failing to file a report or
4972 record required by state or federal law, or wilfully impeding or obstructing the filing of a
4973 required report. These reports or records only include those which are signed in the capacity of
4974 a licensed health facility administrator; and

4975 (b) acting in a manner inconsistent with the health and safety of the patients of the
4976 health facility in which he is the administrator.

4977 Section 88. Section **58-15-3** is amended to read:

4978 **58-15-3. Health Facility Administrators Licensing Board.**

4979 (1) There is created a Health Facility Administrators Licensing Board consisting of one
4980 administrator from a skilled nursing facility, two administrators from intermediate care
4981 facilities, one administrator from an intermediate care facility for [~~the mentally retarded~~]
4982 people with an intellectual disability, and one member from the general public.

4983 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

4984 (3) The duties and responsibilities of the board shall be in accordance with Sections
4985 58-1-202 and 58-1-203. The board, in collaboration with the division, may establish

4986 continuing education requirements by rule. Board members may not receive compensation for
4987 their involvement in continuing education programs.

4988 Section 89. Section **58-17b-503** is amended to read:

4989 **58-17b-503. Exception to unprofessional conduct.**

4990 (1) For purposes of this section:

4991 (a) [~~"ICFMR"~~] "Licensed intermediate care facility for people with an intellectual
4992 disability" means an intermediate care facility for [~~the mentally retarded~~] people with an
4993 intellectual disability that is licensed as a nursing care facility or a small health care facility
4994 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

4995 (b) "Nursing care facility" has the same definition as in Section 26-21-2.

4996 (c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package
4997 with identification that indicates the lot number and expiration date for the drug.

4998 (2) Notwithstanding the provisions of Subsection 58-17b-502(5), a pharmacist may
4999 accept back and redistribute any unused drug, or a part of it, after it has left the premises of the
5000 pharmacy if:

5001 (a) the drug was prescribed to a patient in a nursing care facility, [~~an ICFMR~~] a
5002 licensed intermediate care facility for people with an intellectual disability, or state prison
5003 facility, county jail, or state hospital;

5004 (b) the drug was stored under the supervision of a licensed health care provider
5005 according to manufacturer recommendations;

5006 (c) the drug is in a unit pack or in the manufacturer's sealed container;

5007 (d) the drug was returned to the original dispensing pharmacy;

5008 (e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy
5009 intern; and

5010 (f) accepting back and redistribution of the drug complies with Federal Food and Drug
5011 Administration and Drug Enforcement Administration regulations.

5012 Section 90. Section **58-17b-701** is amended to read:

5013 **58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action**
5014 **and procedures.**

5015 (1) As used in this section:

5016 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section

5017 75-1-201.

5018 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5019 62A-15-602.

5020 (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated
5021 person, or that the pharmacist [~~is mentally ill~~] has a mental illness and is unable to safely
5022 engage in the practice of pharmacy, the director shall immediately suspend the license of the
5023 pharmacist upon the entry of the judgment of the court, without further proceedings under Title
5024 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the
5025 court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the
5026 suspension.

5027 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5028 pharmacist, who is not determined judicially to be an incapacitated person or to [~~be mentally~~
5029 ~~ill~~] have a mental illness, is incapable of practicing pharmacy with reasonable skill regarding
5030 the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
5031 mental or physical condition, the board shall recommend that the director file a petition with
5032 the division, and cause the petition to be served upon the pharmacist with a notice of hearing
5033 on the sole issue of the capacity of the pharmacist to competently and safely engage in the
5034 practice of pharmacy.

5035 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
5036 Administrative Procedures Act, except as provided in Subsection (4).

5037 (4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter
5038 gives consent to:

5039 (i) submitting at the pharmacist's own expense to an immediate mental or physical
5040 examination when directed in writing by the division, with the consent of a majority of the
5041 board, to do so; and

5042 (ii) the admissibility of the reports of the examining practitioner's testimony or
5043 examination in any proceeding regarding the license of the pharmacist, and waives all
5044 objections on the ground the reports constitute a privileged communication.

5045 (b) The examination may be ordered by the division, with the consent of a majority of
5046 the board, only upon a finding of reasonable cause to believe:

5047 (i) the pharmacist [~~is mentally ill or~~] has a mental illness, is incapacitated or otherwise

5048 unable to practice pharmacy with reasonable skill and safety; and

5049 (ii) immediate action by the division and the board is necessary to prevent harm to the
5050 pharmacist's patients or the general public.

5051 (c) (i) Failure of a pharmacist to submit to the examination ordered under this section
5052 is a ground for the division's immediate suspension of the pharmacist's license by written order
5053 of the director.

5054 (ii) The division may enter the order of suspension without further compliance with
5055 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5056 submit to the examination ordered under this section was due to circumstances beyond the
5057 control of the pharmacist and was not related directly to the illness or incapacity of the
5058 pharmacist.

5059 (5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the
5060 right to a hearing to appeal the suspension within 10 days after the license is suspended.

5061 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
5062 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5063 for the continuance of the order of suspension in order to prevent harm to the pharmacist's
5064 patients or the general public.

5065 (6) A pharmacist whose license is revoked, suspended, or in any way restricted under
5066 this section may request the division and the board to consider, at reasonable intervals,
5067 evidence presented by the pharmacist, under procedures established by division rule, regarding
5068 any change in the pharmacist's condition, to determine whether:

5069 (a) the pharmacist is or is not able to safely and competently engage in the practice of
5070 pharmacy; and

5071 (b) the pharmacist is qualified to have the pharmacist's licensure to practice under this
5072 chapter restored completely or in part.

5073 Section 91. Section **58-26a-307** is amended to read:

5074 **58-26a-307. CPA emeritus status -- Renewal of license.**

5075 (1) A person currently licensed as a certified public accountant may, on any renewal
5076 date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus
5077 registration if:

5078 (a) (i) the licensee is at least 60 years of age as of the date of renewal;

- 5079 (ii) the licensee [~~is disabled~~] has a disability; or
5080 (iii) the board finds other good cause for believing that the licensee will not return to
5081 the practice of public accountancy;
- 5082 (b) the licensee makes an application for transfer of status and registration and pays a
5083 registration fee determined by the department under Section 63J-1-504;
- 5084 (c) the licensee, on application for transfer, certifies that the licensee will not engage in
5085 the practice of public accountancy while in the status of CPA emeritus registration; and
- 5086 (d) the licensee is in good standing as a CPA and not subject to any order of
5087 revocation, suspension, or probation.
- 5088 (2) Each CPA emeritus registration shall be issued in accordance with a two-year
5089 renewal cycle established by rule.
- 5090 (3) CPA emeritus registrants may not engage in the practice of public accountancy.
- 5091 (4) CPA emeritus registrants are not required to fulfill the continuing professional
5092 education or peer review provisions of this chapter.
- 5093 (5) Each CPA emeritus registrant is responsible for renewing the registration,
5094 according to procedures that the division establishes by rule in collaboration with the board in
5095 accordance with Section 58-1-308.
- 5096 (6) A CPA emeritus registrant may reinstate the CPA license by:
5097 (a) submitting an application in a form prescribed by the division;
5098 (b) paying a fee determined by the department under Section 63J-1-504; and
5099 (c) showing evidence of having completed the continuing professional education
5100 requirement established by rule.

5101 Section 92. Section **58-31b-102** is amended to read:

5102 **58-31b-102. Definitions.**

5103 In addition to the definitions in Section 58-1-102, as used in this chapter:

- 5104 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
5105 for acts or omissions determined to constitute unprofessional or unlawful conduct in
5106 accordance with a fine schedule established by rule and as a result of an adjudicative
5107 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 5108 (2) "Applicant" means a person who applies for licensure or certification under this
5109 chapter by submitting a completed application for licensure or certification and the required

5110 fees to the department.

5111 (3) "Approved education program" means a nursing education program that meets the
5112 minimum standards for educational programs established under this chapter and by division
5113 rule in collaboration with the board.

5114 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

5115 (5) "Consultation and referral plan" means a written plan jointly developed by an
5116 advanced practice registered nurse and a consulting physician that permits the advanced
5117 practice registered nurse to prescribe schedule II-III controlled substances in consultation with
5118 the consulting physician.

5119 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
5120 surgeon licensed in accordance with this title who has agreed to consult with an advanced
5121 practice registered nurse with a controlled substance license, a DEA registration number, and
5122 who will be prescribing schedule II-III controlled substances.

5123 (7) "Diagnosis" means the identification of and discrimination between physical and
5124 psychosocial signs and symptoms essential to the effective execution and management of
5125 health care.

5126 (8) "Examinee" means a person who applies to take or does take any examination
5127 required under this chapter for licensure.

5128 (9) "Licensee" means a person who is licensed or certified under this chapter.

5129 (10) "Long-term care facility" means any of the following facilities licensed by the
5130 Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
5131 Inspection Act:

5132 (a) a nursing care facility;

5133 (b) a small health care facility;

5134 (c) an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual
5135 disability;

5136 (d) an assisted living facility Type I or II; or

5137 (e) a designated swing bed unit in a general hospital.

5138 (11) "Medication aide certified" means a certified nurse aide who:

5139 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;

5140 (b) has received a minimum of 60 hours of classroom and 40 hours of practical training

5141 that is approved by the division in collaboration with the board, in administering routine
5142 medications to patients or residents of long-term care facilities; and

5143 (c) is certified by the division as a medication aide certified.

5144 (12) (a) "Practice as a medication aide certified" means the limited practice of nursing
5145 under the supervision, as defined by the division by administrative rule, of a licensed nurse,
5146 involving routine patient care that requires minimal or limited specialized or general
5147 knowledge, judgment, and skill, to an individual who:

5148 (i) is ill, injured, infirm, [~~developmentally or physically disabled, mentally disabled, or~~
5149 ~~mentally retarded, and who~~] has a physical, mental, developmental, or intellectual disability;
5150 and

5151 (ii) is in a regulated long-term care facility.

5152 (b) "Practice as a medication aide certified":

5153 (i) includes:

5154 (A) providing direct personal assistance or care; and

5155 (B) administering routine medications to patients in accordance with a formulary and
5156 protocols to be defined by the division by rule; and

5157 (ii) does not include assisting a resident of an assisted living facility, a long term care
5158 facility, or an intermediate care facility for [~~the mentally retarded~~] people with an intellectual
5159 disability to self administer a medication, as regulated by the Department of Health by
5160 administrative rule.

5161 (13) "Practice of advanced practice registered nursing" means the practice of nursing
5162 within the generally recognized scope and standards of advanced practice registered nursing as
5163 defined by rule and consistent with professionally recognized preparation and education
5164 standards of an advanced practice registered nurse by a person licensed under this chapter as an
5165 advanced practice registered nurse. Advanced practice registered nursing includes:

5166 (a) maintenance and promotion of health and prevention of disease;

5167 (b) diagnosis, treatment, correction, consultation, and referral for common health
5168 problems;

5169 (c) prescription or administration of prescription drugs or devices including:

5170 (i) local anesthesia;

5171 (ii) schedule IV-V controlled substances; and

5172 (iii) schedule II-III controlled substances in accordance with a consultation and referral
5173 plan; or

5174 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
5175 related services upon the request of a licensed health care professional by an advanced practice
5176 registered nurse specializing as a certified registered nurse anesthetist, including:

5177 (i) preanesthesia preparation and evaluation including:

5178 (A) performing a preanesthetic assessment of the patient;

5179 (B) ordering and evaluating appropriate lab and other studies to determine the health of
5180 the patient; and

5181 (C) selecting, ordering, or administering appropriate medications;

5182 (ii) anesthesia induction, maintenance, and emergence, including:

5183 (A) selecting and initiating the planned anesthetic technique;

5184 (B) selecting and administering anesthetics and adjunct drugs and fluids; and

5185 (C) administering general, regional, and local anesthesia;

5186 (iii) postanesthesia follow-up care, including:

5187 (A) evaluating the patient's response to anesthesia and implementing corrective
5188 actions; and

5189 (B) selecting, ordering, or administering the medications and studies listed in

5190 Subsection (13)(d); and

5191 (iv) other related services within the scope of practice of a certified registered nurse
5192 anesthetist, including:

5193 (A) emergency airway management;

5194 (B) advanced cardiac life support; and

5195 (C) the establishment of peripheral, central, and arterial invasive lines; and

5196 (v) for purposes of Subsection (13)(d), "upon the request of a licensed health care
5197 professional":

5198 (A) means a health care professional practicing within the scope of the health care
5199 professional's license, requests anesthesia services for a specific patient; and

5200 (B) does not require an advanced practice registered nurse specializing as a certified
5201 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
5202 authority to select, administer, or provide preoperative, intraoperative, or postoperative

5203 anesthesia care and services.

5204 (14) "Practice of nursing" means assisting individuals or groups to maintain or attain
5205 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
5206 responses to care and treatment. The practice of nursing requires substantial specialized or
5207 general knowledge, judgment, and skill based upon principles of the biological, physical,
5208 behavioral, and social sciences, and includes:

- 5209 (a) initiating and maintaining comfort measures;
- 5210 (b) promoting and supporting human functions and responses;
- 5211 (c) establishing an environment conducive to well-being;
- 5212 (d) providing health counseling and teaching;
- 5213 (e) collaborating with health care professionals on aspects of the health care regimen;
- 5214 (f) performing delegated procedures only within the education, knowledge, judgment,
5215 and skill of the licensee; and
- 5216 (g) delegating nurse interventions that may be performed by others and are not in
5217 conflict with this chapter.

5218 (15) "Practice of practical nursing" means the performance of nursing acts in the
5219 generally recognized scope of practice of licensed practical nurses as defined by rule and as
5220 provided in this Subsection (15) by a person licensed under this chapter as a licensed practical
5221 nurse and under the direction of a registered nurse, licensed physician, or other specified health
5222 care professional as defined by rule. Practical nursing acts include:

- 5223 (a) contributing to the assessment of the health status of individuals and groups;
- 5224 (b) participating in the development and modification of the strategy of care;
- 5225 (c) implementing appropriate aspects of the strategy of care;
- 5226 (d) maintaining safe and effective nursing care rendered to a patient directly or
5227 indirectly; and
- 5228 (e) participating in the evaluation of responses to interventions.

5229 (16) "Practice of registered nursing" means performing acts of nursing as provided in
5230 this Subsection (16) by a person licensed under this chapter as a registered nurse within the
5231 generally recognized scope of practice of registered nurses as defined by rule. Registered
5232 nursing acts include:

- 5233 (a) assessing the health status of individuals and groups;

- 5234 (b) identifying health care needs;
- 5235 (c) establishing goals to meet identified health care needs;
- 5236 (d) planning a strategy of care;
- 5237 (e) prescribing nursing interventions to implement the strategy of care;
- 5238 (f) implementing the strategy of care;
- 5239 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 5240 indirectly;
- 5241 (h) evaluating responses to interventions;
- 5242 (i) teaching the theory and practice of nursing; and
- 5243 (j) managing and supervising the practice of nursing.
- 5244 (17) "Routine medications":
- 5245 (a) means established medications administered to a medically stable individual as
- 5246 determined by a licensed health care practitioner or in consultation with a licensed medical
- 5247 practitioner; and
- 5248 (b) is limited to medications that are administered by the following routes:
- 5249 (i) oral;
- 5250 (ii) sublingual;
- 5251 (iii) buccal;
- 5252 (iv) eye;
- 5253 (v) ear;
- 5254 (vi) nasal;
- 5255 (vii) rectal;
- 5256 (viii) vaginal;
- 5257 (ix) skin ointments, topical including patches and transdermal;
- 5258 (x) premeasured medication delivered by aerosol/nebulizer; and
- 5259 (xi) medications delivered by metered hand-held inhalers.
- 5260 (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.
- 5261 (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
- 5262 to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with
- 5263 the standards of the profession.
- 5264 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and

5265 as may be further defined by rule.

5266 Section 93. Section **58-31b-401** is amended to read:

5267 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
5268 **proceedings.**

5269 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the
5270 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
5271 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be
5272 in accordance with Section 58-1-401.

5273 (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as
5274 defined in Section 75-1-201 or that the nurse [~~is mentally ill~~] has a mental illness, as defined in
5275 Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall
5276 immediately suspend the license of the nurse upon the entry of the judgment of the court,
5277 without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
5278 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
5279 notify the nurse in writing of the suspension.

5280 (3) (a) If the division and the majority of the board find reasonable cause to believe a
5281 nurse who is not determined judicially to be an incapacitated person or to [~~be mentally ill~~] have
5282 a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of
5283 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
5284 physical condition, the board shall recommend that the director file a petition with the division,
5285 and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of
5286 the capacity of the nurse to competently, safely engage in the practice of nursing.

5287 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
5288 Administrative Procedures Act, except as provided in Subsection (4).

5289 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
5290 consent to:

5291 (i) submitting to an immediate mental or physical examination, at the nurse's expense
5292 and by a division-approved practitioner selected by the nurse when directed in writing by the
5293 division and a majority of the board to do so; and

5294 (ii) the admissibility of the reports of the examining practitioner's testimony or
5295 examination, and waives all objections on the ground the reports constitute a privileged

5296 communication.

5297 (b) The examination may be ordered by the division, with the consent of a majority of
5298 the board, only upon a finding of reasonable cause to believe:

5299 (i) the nurse [~~is mentally ill or~~ has a mental illness, is incapacitated, or otherwise
5300 unable to practice nursing with reasonable skill and safety; and

5301 (ii) immediate action by the division and the board is necessary to prevent harm to the
5302 nurse's patients or the general public.

5303 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
5304 ground for the division's immediate suspension of the nurse's license by written order of the
5305 director.

5306 (ii) The division may enter the order of suspension without further compliance with
5307 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5308 submit to the examination ordered under this section was due to circumstances beyond the
5309 control of the nurse and was not related directly to the illness or incapacity of the nurse.

5310 (5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the
5311 right to a hearing to appeal the suspension within 10 days after the license is suspended.

5312 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
5313 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5314 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or
5315 the general public.

5316 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
5317 section may request the division and the board to consider, at reasonable intervals, evidence
5318 presented by the nurse, under procedures established by division rule, regarding any change in
5319 the nurse's condition, to determine whether:

5320 (a) the nurse is or is not able to safely and competently engage in the practice of
5321 nursing; and

5322 (b) the nurse is qualified to have the nurse's license to practice under this chapter
5323 restored completely or in part.

5324 (7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the
5325 division to report current significant investigative information to the coordinated licensure
5326 information system for transmission to party states as required of the division by Article VII of

5327 the Nurse Licensure Compact in Section 58-31c-102.

5328 (8) For purposes of this section:

5329 (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

5330 (b) any terms or conditions applied to the word "nurse" in this section also apply to a

5331 medication aide certified.

5332 Section 94. Section **58-60-114** is amended to read:

5333 **58-60-114. Confidentiality -- Exemptions.**

5334 (1) A mental health therapist under this chapter may not disclose any confidential

5335 communication with a client or patient without the express consent of:

5336 (a) the client or patient;

5337 (b) the parent or legal guardian of a minor client or patient; or

5338 (c) the authorized agent of a client or patient.

5339 (2) A mental health therapist under this chapter is not subject to Subsection (1) if:

5340 (a) ~~[he]~~ the mental health therapist is permitted or required by state or federal law, rule,

5341 regulation, or order to report or disclose any confidential communication, including:

5342 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of

5343 ~~[Disabled]~~ a Vulnerable Adult;

5344 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting

5345 Requirements;

5346 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to

5347 Warn; or

5348 (iv) reporting of a communicable disease as required under Section 26-6-6;

5349 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made

5350 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

5351 (c) the disclosure is made under a generally recognized professional or ethical standard

5352 that authorizes or requires the disclosure.

5353 Section 95. Section **58-60-509** is amended to read:

5354 **58-60-509. Confidentiality -- Exemptions.**

5355 (1) A licensee under this part may not disclose any confidential communication with a

5356 client or patient without the express consent of:

5357 (a) the client or patient;

- 5358 (b) the parent or legal guardian of a minor client or patient; or
5359 (c) the authorized agent of a client or patient.
- 5360 (2) A licensee under this part is not subject to Subsection (1) if:
- 5361 (a) ~~[he]~~ the licensee is permitted or required by state or federal law, rule, regulation, or
5362 order to report or disclose any confidential communication, including:
- 5363 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a
5364 Vulnerable ~~[Adults]~~ Adult;
- 5365 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
5366 Requirements;
- 5367 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
5368 Warn; or
- 5369 (iv) reporting of a communicable disease as required under Section 26-6-6;
- 5370 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
5371 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
- 5372 (c) the disclosure is made under a generally recognized professional or ethical standard
5373 that authorizes or requires the disclosure.
- 5374 Section 96. Section **58-61-602** is amended to read:
- 5375 **58-61-602. Confidentiality -- Exemptions.**
- 5376 (1) A psychologist under this chapter may not disclose any confidential communication
5377 with a client or patient without the express consent of:
- 5378 (a) the client or patient;
- 5379 (b) the parent or legal guardian of a minor client or patient; or
- 5380 (c) the authorized agent of a client or patient.
- 5381 (2) A psychologist under this chapter is not subject to Subsection (1) if:
- 5382 (a) ~~[he]~~ the psychologist is permitted or required by state or federal law, rule,
5383 regulation, or order to report or disclose any confidential communication, including:
- 5384 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of
5385 ~~[Disabled]~~ a Vulnerable Adult;
- 5386 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
5387 Requirements;
- 5388 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to

5389 Warn; or

5390 (iv) reporting of a communicable disease as required under Section 26-6-6;

5391 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
5392 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

5393 (c) the disclosure is made under a generally recognized professional or ethical standard
5394 that authorizes or requires the disclosure.

5395 Section 97. Section **58-67-601** is amended to read:

5396 **58-67-601. Mentally incompetent or incapacitated physician.**

5397 (1) As used in this section:

5398 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5399 75-1-201.

5400 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5401 62A-15-602.

5402 (2) If a court of competent jurisdiction determines a physician is an incapacitated
5403 person or that the physician [~~is mentally ill~~] has a mental illness and is unable to safely engage
5404 in the practice of medicine, the director shall immediately suspend the license of the physician
5405 upon the entry of the judgment of the court, without further proceedings under Title 63G,
5406 Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's
5407 ruling is pending. The director shall promptly notify the physician, in writing, of the
5408 suspension.

5409 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5410 physician, who is not determined judicially to be an incapacitated person or to [~~be mentally ill~~]
5411 have a mental illness, is incapable of practicing medicine with reasonable skill regarding the
5412 safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
5413 mental or physical condition, the board shall recommend that the director file a petition with
5414 the division, and cause the petition to be served upon the physician with a notice of hearing on
5415 the sole issue of the capacity of the physician to competently and safely engage in the practice
5416 of medicine.

5417 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5418 Administrative Procedures Act, except as provided in Subsection (4).

5419 (4) (a) Every physician who accepts the privilege of being licensed under this chapter

5420 gives consent to:

5421 (i) submitting at the physician's own expense to an immediate mental or physical
5422 examination when directed in writing by the division and a majority of the board to do so; and

5423 (ii) the admissibility of the reports of the examining physician's testimony or
5424 examination, and waives all objections on the ground the reports constitute a privileged
5425 communication.

5426 (b) The examination may be ordered by the division, with the consent of a majority of
5427 the board, only upon a finding of reasonable cause to believe:

5428 (i) the physician [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise
5429 unable to practice medicine with reasonable skill and safety; and

5430 (ii) immediate action by the division and the board is necessary to prevent harm to the
5431 physician's patients or the general public.

5432 (c) (i) Failure of a physician to submit to the examination ordered under this section is
5433 a ground for the division's immediate suspension of the physician's license by written order of
5434 the director.

5435 (ii) The division may enter the order of suspension without further compliance with
5436 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5437 submit to the examination ordered under this section was due to circumstances beyond the
5438 control of the physician and was not related directly to the illness or incapacity of the
5439 physician.

5440 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
5441 to a hearing to appeal the suspension within 10 days after the license is suspended.

5442 (b) The hearing held under this subsection shall be conducted in accordance with
5443 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5444 for the continuance of the order of suspension in order to prevent harm to the physician's
5445 patients or the general public.

5446 (6) A physician whose license is revoked, suspended, or in any way restricted under
5447 this section may request the division and the board to consider, at reasonable intervals,
5448 evidence presented by the physician, under procedures established by division rule, regarding
5449 any change in the physician's condition, to determine whether:

5450 (a) the physician is or is not able to safely and competently engage in the practice of

5451 medicine; and

5452 (b) the physician is qualified to have the physician's license to practice under this
5453 chapter restored completely or in part.

5454 Section 98. Section **58-68-601** is amended to read:

5455 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

5456 (1) As used in this section:

5457 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5458 75-1-201.

5459 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5460 62A-15-602.

5461 (2) If a court of competent jurisdiction determines an osteopathic physician and
5462 surgeon is an incapacitated person or that the physician or surgeon [~~is mentally ill~~] has a mental
5463 illness and is unable to safely engage in the practice of medicine, the director shall immediately
5464 suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of
5465 the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures
5466 Act, regardless of whether an appeal from the court's ruling is pending. The director shall
5467 promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

5468 (3) (a) If the division and a majority of the board find reasonable cause to believe an
5469 osteopathic physician and surgeon, who is not determined judicially to be an incapacitated
5470 person or to [~~be mentally ill~~] have a mental illness, is incapable of practicing osteopathic
5471 medicine with reasonable skill regarding the safety of patients, because of illness, excessive use
5472 of drugs or alcohol, or as a result of any mental or physical condition, the board shall
5473 recommend that the director file a petition with the division, and cause the petition to be served
5474 upon the osteopathic physician and surgeon with a notice of hearing on the sole issue of the
5475 capacity of the osteopathic physician and surgeon to competently and safety engage in the
5476 practice of medicine.

5477 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5478 Administrative Procedures Act, except as provided in Subsection (4).

5479 (4) (a) Every osteopathic physician and surgeon who accepts the privilege of being
5480 licensed under this chapter gives consent to:

5481 (i) submitting at the physician's or surgeon's own expense to an immediate mental or

5482 physical examination when directed in writing by the division and a majority of the board to do
5483 so; and

5484 (ii) the admissibility of the reports of the examining physician's testimony or
5485 examination, and waives all objections on the ground the reports constitute a privileged
5486 communication.

5487 (b) The examination may be ordered by the division, with the consent of a majority of
5488 the board, only upon a finding of reasonable cause to believe:

5489 (i) the osteopathic physician and surgeon [~~is mentally ill or~~] has a mental illness, is
5490 incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

5491 (ii) immediate action by the division and the board is necessary to prevent harm to the
5492 osteopathic physician and surgeon's patients or the general public.

5493 (c) (i) Failure of an osteopathic physician and surgeon to submit to the examination
5494 ordered under this section is a ground for the division's immediate suspension of the
5495 osteopathic physician and surgeon's license by written order of the director.

5496 (ii) The division may enter the order of suspension without further compliance with
5497 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5498 submit to the examination ordered under this section was due to circumstances beyond the
5499 control of the osteopathic physician and surgeon and was not related directly to the illness or
5500 incapacity of the osteopathic physician and surgeon.

5501 (5) (a) An osteopathic physician and surgeon whose license is suspended under
5502 Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the
5503 license is suspended.

5504 (b) The hearing held under this subsection shall be conducted in accordance with
5505 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5506 for the continuance of the order of suspension in order to prevent harm to the osteopathic
5507 physician and surgeon's patients or the general public.

5508 (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in
5509 any way restricted under this section may request the division and the board to consider, at
5510 reasonable intervals, evidence presented by the osteopathic physician and surgeon, under
5511 procedures established by division rule, regarding any change in the osteopathic physician and
5512 surgeon's condition, to determine whether:

5513 (a) the physician or surgeon is or is not able to safely and competently engage in the
5514 practice of medicine; and

5515 (b) the physician or surgeon is qualified to have the physician's or surgeon's license to
5516 practice under this chapter restored completely or in part.

5517 Section 99. Section **58-69-601** is amended to read:

5518 **58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

5519 (1) As used in this section:

5520 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5521 75-1-201.

5522 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5523 62A-15-602.

5524 (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an
5525 incapacitated person or that the dentist or hygienist [~~is mentally ill~~] has a mental illness and is
5526 unable to safely engage in the practice of dentistry or dental hygiene, the director shall
5527 immediately suspend the license of the dentist or dental hygienist upon the entry of the
5528 judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative
5529 Procedures Act, regardless of whether an appeal from the court's ruling is pending. The
5530 director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

5531 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5532 dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to
5533 [~~be mentally ill~~] have a mental illness, is incapable of practicing dentistry or dental hygiene
5534 with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs
5535 or alcohol, or as a result of any mental or physical condition, the board shall recommend that
5536 the director file a petition with the division, and cause the petition to be served upon the dentist
5537 or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or
5538 dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

5539 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
5540 Administrative Procedures Act, except as provided in Subsection (4).

5541 (4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed
5542 under this chapter gives consent to:

5543 (i) submitting at the dentist or dental hygienist's own expense to an immediate mental

5544 or physical examination when directed in writing by the division and a majority of the board to
5545 do so; and

5546 (ii) the admissibility of the reports of the examining practitioner's testimony or
5547 examination, and waives all objections on the ground the reports constitute a privileged
5548 communication.

5549 (b) The examination may be ordered by the division, with the consent of a majority of
5550 the board, only upon a finding of reasonable cause to believe:

5551 (i) the dentist or dental hygienist [~~is mentally ill or~~] has a mental illness, is
5552 incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill
5553 and safety; and

5554 (ii) immediate action by the division and the board is necessary to prevent harm to the
5555 dentist's or dental hygienist's patients or the general public.

5556 (c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered
5557 under this section is a ground for the division's immediate suspension of the dentist's or dental
5558 hygienist's license by written order of the director.

5559 (ii) The division may enter the order of suspension without further compliance with
5560 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5561 submit to the examination ordered under this section was due to circumstances beyond the
5562 control of the dentist or dental hygienist and was not related directly to the illness or incapacity
5563 of the dentist or dental hygienist.

5564 (5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or
5565 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
5566 suspended.

5567 (b) The hearing held under this subsection shall be conducted in accordance with
5568 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5569 for the continuance of the order of suspension in order to prevent harm to the dentist's or dental
5570 hygienist's patients or the general public.

5571 (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way
5572 restricted under this section may request the division and the board to consider, at reasonable
5573 intervals, evidence presented by the dentist or dental hygienist, under procedures established by
5574 division rule, regarding any change in the dentist's or dental hygienist's condition, to determine

5575 whether:

5576 (a) the dentist or dental hygienist is or is not able to safely and competently engage in
5577 the practice of dentistry or dental hygiene; and

5578 (b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's
5579 licensure to practice under this chapter restored completely or in part.

5580 Section 100. Section **58-71-601** is amended to read:

5581 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

5582 (1) As used in this section:

5583 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5584 75-1-201.

5585 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5586 62A-15-602.

5587 (2) If a court of competent jurisdiction determines a naturopathic physician is an
5588 incapacitated person or that the physician [~~is mentally ill and~~] has a mental illness and is unable
5589 to safely engage in the practice of medicine, the director shall immediately suspend the license
5590 of the naturopathic physician upon the entry of the judgment of the court, without further
5591 proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether
5592 an appeal from the court's ruling is pending. The director shall promptly notify the
5593 naturopathic physician, in writing, of the suspension.

5594 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5595 naturopathic physician, who is not determined judicially to be an incapacitated person or to [~~be~~
5596 ~~mentally ill~~] have a mental illness, is incapable of practicing medicine with reasonable skill
5597 regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a
5598 result of any mental or physical condition, the board shall recommend that the director file a
5599 petition with the division, and cause the petition to be served upon the naturopathic physician
5600 with a notice of hearing on the sole issue of the capacity of the naturopathic physician to
5601 competently and safely engage in the practice of medicine.

5602 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5603 Administrative Procedures Act, except as provided in Subsection (4).

5604 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under
5605 this chapter gives consent to:

5606 (i) submitting at the physician's own expense to an immediate mental or physical
5607 examination when directed in writing by the division and a majority of the board to do so; and

5608 (ii) the admissibility of the reports of the examining physician's testimony or
5609 examination, and waives all objections on the ground the reports constitute a privileged
5610 communication.

5611 (b) The examination may be ordered by the division, with the consent of a majority of
5612 the board, only upon a finding of reasonable cause to believe:

5613 (i) the naturopathic physician [~~is mentally ill or~~] has a mental illness, is incapacitated,
5614 or otherwise unable to practice medicine with reasonable skill and safety; and

5615 (ii) immediate action by the division and the board is necessary to prevent harm to the
5616 naturopathic physician's patients or the general public.

5617 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under
5618 this section is a ground for the division's immediate suspension of the naturopathic physician's
5619 license by written order of the director.

5620 (ii) The division may enter the order of suspension without further compliance with
5621 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5622 submit to the examination ordered under this section was due to circumstances beyond the
5623 control of the naturopathic physician and was not related directly to the illness or incapacity of
5624 the naturopathic physician.

5625 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or
5626 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
5627 suspended.

5628 (b) The hearing held under this subsection shall be conducted in accordance with
5629 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5630 for the continuance of the order of suspension in order to prevent harm to the naturopathic
5631 physician's patients or the general public.

5632 (6) A naturopathic physician whose license is revoked, suspended, or in any way
5633 restricted under this section may request the division and the board to consider, at reasonable
5634 intervals, evidence presented by the naturopathic physician, under procedures established by
5635 division rule, regarding any change in the naturopathic physician's condition, to determine
5636 whether:

5637 (a) the physician is or is not able to safely and competently engage in the practice of
5638 medicine; and

5639 (b) the physician is qualified to have the physician's license to practice under this
5640 chapter restored completely or in part.

5641 Section 101. Section **58-73-401** is amended to read:

5642 **58-73-401. Grounds for denial of license -- Disciplinary proceedings -- Limitation**
5643 **on division actions.**

5644 (1) Grounds for the following are in accordance with Section 58-1-401:

5645 (a) refusing to issue a license to an applicant;

5646 (b) refusing to renew the license of a licensee;

5647 (c) revoking, suspending, restricting, or placing on probation the license of a licensee;

5648 (d) issuing a public or private reprimand to a licensee; and

5649 (e) issuing a cease and desist order.

5650 (2) If a court of competent jurisdiction determines a chiropractic physician is
5651 incompetent, mentally incompetent, incapable, or [~~mentally ill~~] has a mental illness, the
5652 director shall suspend the license of that chiropractic physician, even if an appeal is pending.

5653 (3) (a) If it appears to the board there is reasonable cause to believe a chiropractic
5654 physician who has not been judicially determined to be incompetent, mentally incompetent,
5655 incapable, or [~~mentally ill~~] to have a mental illness is unable to practice chiropractic with
5656 reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs,
5657 narcotics, chemicals, or any other substance, or as a result of any mental or physical condition,
5658 a petition shall be served upon that chiropractic physician for a hearing on the sole issue of the
5659 capacity of the chiropractic physician to conduct properly the practice of the chiropractic
5660 physician.

5661 (b) Every chiropractic physician licensed by this state is considered to have:

5662 (i) agreed to submit to a mental or physical examination upon receipt of a written
5663 direction given by the division with the approval of the board; and

5664 (ii) waived all objections to the admissibility of the examining chiropractic physician's
5665 or other practitioner's testimony or examination reports on the ground they constitute a
5666 privileged communication.

5667 (c) Failure of a chiropractic physician to submit to an examination under Subsection

5668 (3)(b) when directed by the division, unless the failure was due to circumstances beyond his
5669 control, constitutes grounds for immediate suspension of the chiropractic physician's license
5670 and an order of suspension of the license may be entered by the division without the taking of
5671 testimony or the presentation of evidence.

5672 (d) A chiropractic physician whose license is suspended under this section shall, at
5673 reasonable intervals, be afforded the opportunity to demonstrate ~~he~~ the chiropractic physician
5674 can resume the competent practice of chiropractic with reasonable skill and safety to patients.

5675 (e) Neither the proceedings of the board nor the action taken by it under this section
5676 may be used against a chiropractic physician in any other proceedings.

5677 (4) The terms of revocation, suspension, or probation under this chapter may include:

5678 (a) revoking the license to practice either permanently or with a stated date before
5679 which the individual may not apply for licensure;

5680 (b) suspending, limiting, or restricting the license to practice chiropractic for up to five
5681 years, including limiting the practice of the person to, or excluding from the person's practice,
5682 one or more specific branches of medicine, including any limitation on practice within the
5683 specified branches;

5684 (c) requiring the license holder to submit to care, counseling, or treatment by
5685 physicians approved by or designated by the board, as a condition for licensure;

5686 (d) requiring the license holder to participate in a program of education prescribed by
5687 the board;

5688 (e) requiring the license holder to practice under the direction of a physician designated
5689 by the board for a specified period of time; or

5690 (f) other appropriate terms and conditions determined by the division in collaboration
5691 with the board to be necessary to protect the public health, safety, or welfare.

5692 Section 102. Section **59-2-1101** is amended to read:

5693 **59-2-1101. Exemption of certain property -- Proportional payments for certain**
5694 **property -- County legislative body authority to adopt rules or ordinances.**

5695 (1) For purposes of this section:

5696 (a) "exclusive use exemption" means a property tax exemption under Subsection

5697 (3)(d), for property owned by a nonprofit entity that is used exclusively for religious,

5698 charitable, or educational purposes;

5699 (b) "government exemption" means a property tax exemption provided under
5700 Subsection (3)(a), (b), or (c); and

5701 (c) "tax relief" means an exemption, deferral, or abatement that is authorized by this
5702 part.

5703 (2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if
5704 the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

5705 (b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional
5706 tax based upon the length of time that the property was not owned by the claimant if:

5707 (i) the claimant is a federal, state, or political subdivision entity described in
5708 Subsection (3)(a), (b), or (c); or

5709 (ii) pursuant to Subsection (3)(d):

5710 (A) the claimant is a nonprofit entity; and

5711 (B) the property is used exclusively for religious, charitable, or educational purposes.

5712 (c) Notwithstanding Subsection (2)(a), a claimant may be allowed a veteran's
5713 exemption in accordance with Sections 59-2-1104 and 59-2-1105 regardless of whether the
5714 claimant is the owner of the property as of January 1 of the year the exemption is claimed if the
5715 claimant is:

5716 (i) the unmarried surviving spouse of:

5717 (A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or

5718 (B) a veteran who was killed in action or died in the line of duty as defined in Section
5719 59-2-1104; or

5720 (ii) a minor orphan of:

5721 (A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or

5722 (B) a veteran who was killed in action or died in the line of duty as defined in Section
5723 59-2-1104.

5724 (3) The following property is exempt from taxation:

5725 (a) property exempt under the laws of the United States;

5726 (b) property of:

5727 (i) the state;

5728 (ii) school districts; and

5729 (iii) public libraries;

- 5730 (c) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:
5731 (i) counties;
5732 (ii) cities;
5733 (iii) towns;
5734 (iv) local districts;
5735 (v) special service districts; and
5736 (vi) all other political subdivisions of the state;
5737 (d) property owned by a nonprofit entity which is used exclusively for religious,
5738 charitable, or educational purposes;
5739 (e) places of burial not held or used for private or corporate benefit;
5740 (f) farm equipment and machinery;
5741 (g) intangible property; and
5742 (h) the ownership interest of an out-of-state public agency, as defined in Section
5743 11-13-103:
5744 (i) if that ownership interest is in property providing additional project capacity, as
5745 defined in Section 11-13-103; and
5746 (ii) on which a fee in lieu of ad valorem property tax is payable under Section
5747 11-13-302.
5748 (4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or
5749 a government exemption ceases to qualify for the exemption because of a change in the
5750 ownership of the property:
5751 (a) the new owner of the property shall pay a proportional tax based upon the period of
5752 time:
5753 (i) beginning on the day that the new owner acquired the property; and
5754 (ii) ending on the last day of the calendar year during which the new owner acquired
5755 the property; and
5756 (b) the new owner of the property and the person from whom the new owner acquires
5757 the property shall notify the county assessor, in writing, of the change in ownership of the
5758 property within 30 days from the day that the new owner acquires the property.
5759 (5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection
5760 (4)(a):

- 5761 (a) is subject to any exclusive use exemption or government exemption that the
 5762 property is entitled to under the new ownership of the property; and
- 5763 (b) applies only to property that is acquired after December 31, 2005.
- 5764 (6) A county legislative body may adopt rules or ordinances to:
- 5765 (a) effectuate the exemptions, deferrals, abatements, or other relief from taxation
 5766 provided in this part; and
- 5767 (b) designate one or more persons to perform the functions given the county under this
 5768 part.
- 5769 Section 103. Section **59-2-1104** is amended to read:
- 5770 **59-2-1104. Definitions -- Veteran's exemption -- Amount of veteran's exemption.**
- 5771 (1) As used in this section and Section 59-2-1105:
- 5772 (a) "Adjusted taxable value limit" means:
- 5773 (i) for the year 2005, \$200,000; and
- 5774 (ii) for each year after 2005, the amount of the adjusted taxable value limit for the
 5775 previous year, plus an amount calculated by multiplying the amount of the adjusted taxable
 5776 value limit for the previous year by the actual percent change in the Consumer Price Index
 5777 during the previous calendar year[;].
- 5778 (b) "Claimant" means:
- 5779 (i) a ~~disabled~~ veteran with a disability who files an application under Section
 5780 59-2-1105 for a veteran's exemption;
- 5781 (ii) the unmarried surviving spouse:
- 5782 (A) of a:
- 5783 (I) deceased ~~disabled~~ veteran with a disability; or
- 5784 (II) veteran who was killed in action or died in the line of duty; and
- 5785 (B) who files an application under Section 59-2-1105 for a veteran's exemption; or
- 5786 (iii) a minor orphan:
- 5787 (A) of a:
- 5788 (I) deceased ~~disabled~~ veteran with a disability; or
- 5789 (II) veteran who was killed in action or died in the line of duty; and
- 5790 (B) who files an application under Section 59-2-1105 for a veteran's exemption[;].
- 5791 (c) "Consumer price index" is as described in Section 1(f)(4), Internal Revenue Code,

5792 and defined in Section 1(f)(5), Internal Revenue Code[;].

5793 (d) "Deceased [~~disabled~~] veteran with a disability" means a deceased person who was a
5794 [~~disabled~~] veteran with a disability at the time the person died[;].

5795 [~~(f)~~] (e) "Military entity" means:

5796 (i) the federal Department of Veterans Affairs; or

5797 (ii) a component of the armed forces of:

5798 (A) the United States; or

5799 (B) the state[;].

5800 [~~(g)~~] (f) "Residence" is as defined in Section 59-2-1202, except that a rented dwelling
5801 is not considered to be a residence[;].

5802 [~~(h)~~] (g) "Veteran who was killed in action or died in the line of duty" means a person
5803 who was killed in action or died in the line of duty in the military service of the United States
5804 or the state, regardless of whether that person [~~was disabled~~] had a disability at the time that
5805 person was killed in action or died in the line of duty[; ~~and~~].

5806 [~~(e) "disabled veteran"~~] (h) "Veteran with a disability" means a [~~disabled~~] person with
5807 a disability who, during military training or a military conflict, [~~was disabled~~] acquired a
5808 disability in the line of duty in the military service of the United States or the state[;].

5809 (i) "Veteran's exemption" means a property tax exemption provided for in Subsection
5810 (2).

5811 (2) (a) The amount of taxable value of the property described in Subsection (2)(b) is
5812 exempt from taxation as calculated under Subsections (2)(c) through (e) if the property
5813 described in Subsection (2)(b) is owned by:

5814 (i) a [~~disabled~~] veteran with a disability; or

5815 (ii) the unmarried surviving spouse or a minor orphan of a:

5816 (A) deceased [~~disabled~~] veteran with a disability; or

5817 (B) veteran who was killed in action or died in the line of duty.

5818 (b) Subsection (2)(a) applies to the following property:

5819 (i) the claimant's primary residence;

5820 (ii) tangible personal property that:

5821 (A) is held exclusively for personal use; and

5822 (B) is not used in a trade or business; or

- 5823 (iii) a combination of Subsections (2)(b)(i) and (ii).
- 5824 (c) Except as provided in Subsection (2)(d) or (e), the amount of taxable value of
5825 property described in Subsection (2)(b) that is exempt under Subsection (2)(a) is:
- 5826 (i) as described in Subsection (2)(f), if the property is owned by:
- 5827 (A) a [~~disabled~~] veteran with a disability;
- 5828 (B) the unmarried surviving spouse of a deceased [~~disabled~~] veteran with a disability;
- 5829 or
- 5830 (C) a minor orphan of a deceased [~~disabled~~] veteran with a disability; or
- 5831 (ii) equal to the total taxable value of the claimant's property described in Subsection
5832 (2)(b) if the property is owned by:
- 5833 (A) the unmarried surviving spouse of a veteran who was killed in action or died in the
5834 line of duty; or
- 5835 (B) a minor orphan of a veteran who was killed in action or died in the line of duty.
- 5836 (d) (i) Notwithstanding Subsection (2)(c)(i) and subject to Subsection (2)(d)(ii), a
5837 veteran's exemption may not be allowed under this Subsection (2) if the percentage of disability
5838 listed on the certificate described in Subsection 59-2-1105(3)(a) is less than 10%.
- 5839 (ii) A [~~disabled~~] veteran with a disability is considered to [~~be~~] have a 100% [~~disabled~~
5840 disability, regardless of the percentage of disability listed on a certificate described in
5841 Subsection 59-2-1105(3)(a), if the United States Department of Veterans' Affairs certifies the
5842 veteran in the classification of individual unemployability.
- 5843 (e) Notwithstanding Subsection (2)(c)(i), a claimant who is the unmarried surviving
5844 spouse or minor orphan of a deceased [~~disabled~~] veteran with a disability may claim a veteran's
5845 exemption for the total value of the property described in Subsection (2)(b) if:
- 5846 (i) the deceased [~~disabled~~] veteran with a disability served in the military service of the
5847 United States or the state prior to January 1, 1921; and
- 5848 (ii) the percentage of disability listed on the certificate described in Subsection
5849 59-2-1105(3)(a) for the deceased [~~disabled~~] veteran with a disability is 10% or more.
- 5850 (f) Except as provided in Subsection (2)(g), the amount of the taxable value of the
5851 property described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) is equal to the
5852 percentage of disability listed on the certificate described in Subsection 59-2-1105(3)(a)
5853 multiplied by the adjusted taxable value limit.

5854 (g) Notwithstanding Subsection (2)(f), the amount of the taxable value of the property
5855 described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) may not be greater than
5856 the taxable value of the property described in Subsection (2)(b).

5857 (h) For purposes of this section and Section 59-2-1105, a person who is honorably
5858 discharged from military service of the United States or the state:

5859 (i) is presumed to be a citizen of the United States; and

5860 (ii) shall not be required to provide additional proof of citizenship to establish that the
5861 veteran is a citizen of the United States.

5862 (3) The Department of Veterans' Affairs created in Section 71-8-2 shall, through an
5863 informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
5864 resolve each dispute arising under this section concerning a veteran's status as a ~~disabled~~
5865 veteran with a disability.

5866 Section 104. Section **59-2-1105** is amended to read:

5867 **59-2-1105. Application for veteran's exemption -- Rulemaking authority --**
5868 **Statement -- County authority to make refunds.**

5869 (1) (a) Except as provided in Subsection 59-2-1101(2)(c), a veteran's exemption may be
5870 allowed only if the interest of the claimant is on record on January 1 of the year the exemption
5871 is claimed.

5872 (b) If the claimant has an interest in real property under a contract, the veteran's
5873 exemption may be allowed if it is proved to the satisfaction of the county that the claimant is:

5874 (i) the purchaser under the contract; and

5875 (ii) obligated to pay the taxes on the property beginning January 1 of the year the
5876 exemption is claimed.

5877 (c) If the claimant is the grantor of a trust holding title to real or tangible personal
5878 property on which a veteran's exemption is claimed, the claimant may claim the portion of the
5879 veteran's exemption under Section 59-2-1104 and be treated as the owner of that portion of the
5880 property held in trust for which the claimant proves to the satisfaction of the county that:

5881 (i) title to the portion of the trust will revert in the claimant upon the exercise of a
5882 power:

5883 (A) by:

5884 (I) the claimant as grantor of the trust;

5885 (II) a nonadverse party; or
5886 (III) both the claimant and a nonadverse party; and
5887 (B) regardless of whether the power is a power:
5888 (I) to revoke;
5889 (II) to terminate;
5890 (III) to alter;
5891 (IV) to amend; or
5892 (V) to appoint;
5893 (ii) the claimant is obligated to pay the taxes on that portion of the trust property
5894 beginning January 1 of the year the claimant claims the exemption; and
5895 (iii) the claimant meets the requirements under this part for the exemption.
5896 (2) (a) (i) A claimant applying for a veteran's exemption under this section shall file an
5897 application:
5898 (A) with the county in which that person resides; and
5899 (B) except as provided in Subsection (2)(b) or (e), on or before September 1 of the year
5900 in which that claimant is applying for the veteran's exemption in accordance with this section.
5901 (ii) A county shall provide a claimant who files an application for a veteran's
5902 exemption in accordance with this section with a receipt:
5903 (A) stating that the county received the claimant's application; and
5904 (B) no later than 30 days after the day on which the claimant filed the application in
5905 accordance with this section.
5906 (b) Notwithstanding Subsection (2)(a)(i)(B) or (2)(e):
5907 (i) subject to Subsection (2)(b)(iv), for a claimant who applies for a veteran's
5908 exemption on or after January 1, 2004, a county shall extend the deadline for filing the
5909 application required by Subsection (2)(a) to September 1 of the year after the year the claimant
5910 would otherwise be required to file the application under Subsection (2)(a)(i)(B) if:
5911 (A) on or after January 1, 2004, a military entity issues a written decision that the:
5912 (I) ~~disabled veteran is disabled~~ veteran has a disability; or
5913 (II) deceased ~~disabled~~ veteran with a disability with respect to whom the claimant
5914 applies for a veteran's exemption ~~was disabled~~ had a disability at the time the deceased
5915 ~~disabled~~ veteran with a disability died; and

5916 (B) the date the written decision described in Subsection (2)(b)(i)(A) takes effect is in
5917 any year prior to the current calendar year;

5918 (ii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a
5919 veteran's exemption on or after January 1, 2004, a county shall allow the claimant to amend the
5920 application required by Subsection (2)(a) on or before September 1 of the year after the year the
5921 claimant filed the application under Subsection (2)(a)(i)(B) if:

5922 (A) on or after January 1, 2004, a military entity issues a written decision that the
5923 percentage of disability has changed for the:

5924 (I) [~~disabled~~] veteran with a disability; or

5925 (II) deceased [~~disabled~~] veteran with a disability with respect to whom the claimant
5926 applies for a veteran's exemption; and

5927 (B) the date the written decision described in Subsection (2)(b)(ii)(A) takes effect is in
5928 any year prior to the current calendar year;

5929 (iii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a
5930 veteran's exemption on or after January 1, 2004, a county shall extend the deadline for filing
5931 the application required by Subsection (2)(a) to September 1 of the year after the year the
5932 claimant would otherwise be required to file the application under Subsection (2)(a)(i)(B) if the
5933 county legislative body determines that:

5934 (A) the claimant or a member of the claimant's immediate family had an illness or
5935 injury that prevented the claimant from filing the application on or before the deadline for
5936 filing the application established in Subsection (2)(a)(i)(B);

5937 (B) a member of the claimant's immediate family died during the calendar year the
5938 claimant was required to file the application under Subsection (2)(a)(i)(B);

5939 (C) the claimant was not physically present in the state for a time period of at least six
5940 consecutive months during the calendar year the claimant was required to file the application
5941 under Subsection (2)(a)(i)(B); or

5942 (D) the failure of the claimant to file the application on or before the deadline for filing
5943 the application established in Subsection (2)(a)(i)(B):

5944 (I) would be against equity or good conscience; and

5945 (II) was beyond the reasonable control of the claimant; and

5946 (iv) a county may extend the deadline for filing an application or amending an

5947 application under this Subsection (2) until December 31 if the county finds that good cause
5948 exists to extend the deadline.

5949 (c) The following shall accompany the initial application for a veteran's exemption:

5950 (i) a copy of the veteran's certificate of discharge from the military service of:

5951 (A) the United States; or

5952 (B) this state; or

5953 (ii) other satisfactory evidence of eligible military service.

5954 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5955 commission may by rule:

5956 (i) establish procedures and requirements for amending an application under

5957 Subsection (2)(b)(ii);

5958 (ii) for purposes of Subsection (2)(b)(iii), define the terms:

5959 (A) "immediate family"; or

5960 (B) "physically present"; or

5961 (iii) for purposes of Subsection (2)(b)(iii), prescribe the circumstances under which the

5962 failure of a claimant to file an application on or before the deadline for filing the application

5963 established in Subsection (2)(a)(i)(B):

5964 (A) would be against equity or good conscience; and

5965 (B) is beyond the reasonable control of a claimant.

5966 (e) If a claimant has on file with the county the application described in Subsection

5967 (2)(a), the county may not require the claimant to file another application described in

5968 Subsection (2)(a) unless:

5969 (i) the claimant applies all or a portion of an exemption allowed by this section to any
5970 tangible personal property;

5971 (ii) the percentage of disability has changed for the:

5972 (A) [~~disabled~~] veteran with a disability; or

5973 (B) deceased [~~disabled~~] veteran with a disability with respect to whom a claimant

5974 applies for a veteran's exemption under this section;

5975 (iii) the [~~disabled~~] veteran with a disability dies;

5976 (iv) the claimant's ownership interest in the claimant's primary residence changes;

5977 (v) the claimant's occupancy of the primary residence for which the claimant claims an

5978 exemption under Section 59-2-1104 changes; or
5979 (vi) the claimant who files an application for a veteran's exemption with respect to a
5980 deceased [~~disabled~~] veteran with a disability or veteran who was killed in action or died in the
5981 line of duty is a person other than the claimant who filed the application described in
5982 Subsection (2)(a) for a veteran's exemption:
5983 (A) for the calendar year immediately preceding the current calendar year; and
5984 (B) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who
5985 was killed in action or died in the line of duty.
5986 (f) The county may verify that the residential property for which the claimant claims an
5987 exemption under Section 59-2-1104 is the claimant's primary residence.
5988 (3) (a) (i) Subject to Subsection (3)(a)(ii), a claimant who files an application for a
5989 veteran's exemption shall have on file with the county a statement:
5990 (A) issued by a military entity; and
5991 (B) listing the percentage of disability for the [~~disabled~~] veteran with a disability or
5992 deceased [~~disabled~~] veteran with a disability with respect to whom a claimant applies for a
5993 veteran's exemption.
5994 (ii) If a claimant has on file with the county the statement described in Subsection
5995 (3)(a)(i), the county may not require the claimant to file another statement described in
5996 Subsection (3)(a)(i) unless:
5997 (A) the claimant who files an application under this section for a veteran's exemption
5998 with respect to a deceased [~~disabled~~] veteran with a disability or veteran who was killed in
5999 action or died in the line of duty is a person other than the claimant who filed the statement
6000 described in Subsection (3)(a)(i) for a veteran's exemption:
6001 (I) for the calendar year immediately preceding the current calendar year; and
6002 (II) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who
6003 was killed in action or died in the line of duty; or
6004 (B) the percentage of disability has changed for a:
6005 (I) [~~disabled~~] veteran with a disability; or
6006 (II) deceased [~~disabled~~] veteran with a disability with respect to whom the claimant
6007 applies for a veteran's exemption under this section.
6008 (b) For a claimant filing an application in accordance with Subsection (2)(b)(i), the

6009 claimant shall include with the application required by Subsection (2) a statement issued by a
6010 military entity listing the date the written decision described in Subsection (2)(b)(i)(A) takes
6011 effect.

6012 (c) For a claimant amending an application in accordance with Subsection (2)(b)(ii),
6013 the claimant shall provide to the county a statement issued by a military entity listing the date
6014 the written decision described in Subsection (2)(b)(ii)(A) takes effect.

6015 (4) (a) For purposes of this Subsection (4):

6016 (i) "Property taxes due" means the taxes due on a claimant's property:

6017 (A) for which a veteran's exemption is granted by a county; and

6018 (B) for the calendar year for which the veteran's exemption is granted.

6019 (ii) "Property taxes paid" is an amount equal to the sum of:

6020 (A) the amount of the property taxes the claimant paid for the calendar year for which
6021 the claimant is applying for the veteran's exemption; and

6022 (B) the veteran's exemption the county granted for the calendar year described in
6023 Subsection (4)(a)(ii)(A).

6024 (b) A county granting a veteran's exemption to a claimant shall refund to that claimant
6025 an amount equal to the amount by which the claimant's property taxes paid exceed the
6026 claimant's property taxes due, if that amount is \$1 or more.

6027 Section 105. Section **59-2-1109** is amended to read:

6028 **59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County**
6029 **authority to make refunds.**

6030 (1) A person under the age of 65 years is not eligible for a deferral or abatement
6031 provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

6032 (a) the county finds that extreme hardship would prevail if the grants were not made; or

6033 (b) the person [~~is disabled~~] has a disability.

6034 (2) (a) An application for the deferral or abatement shall be filed on or before
6035 September 1 with the county in which the property is located.

6036 (b) The application shall include a signed statement setting forth the eligibility of the
6037 applicant for the deferral or abatement.

6038 (c) Both husband and wife shall sign the application if the husband and wife seek a
6039 deferral or abatement on a residence:

- 6040 (i) in which they both reside; and
6041 (ii) which they own as joint tenants.
6042 (d) A county may extend the deadline for filing under Subsection (2)(a) until December
6043 31 if the county finds that good cause exists to extend the deadline.
6044 (3) (a) For purposes of this Subsection (3):
6045 (i) "Property taxes due" means the taxes due on a person's property:
6046 (A) for which an abatement is granted by a county under Section 59-2-1107; and
6047 (B) for the calendar year for which the abatement is granted.
6048 (ii) "Property taxes paid" is an amount equal to the sum of:
6049 (A) the amount of the property taxes the person paid for the taxable year for which the
6050 person is applying for the abatement; and
6051 (B) the amount of the abatement the county grants under Section 59-2-1107.
6052 (b) A county granting an abatement to a person under Section 59-2-1107 shall refund
6053 to that person an amount equal to the amount by which the person's property taxes paid exceed
6054 the person's property taxes due, if that amount is \$1 or more.
6055 (4) For purposes of this section:
6056 (a) a poor person is any person:
6057 (i) whose total household income as defined in Section 59-2-1202 is less than the
6058 maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);
6059 (ii) who resides for not less than 10 months of each year in the residence for which the
6060 tax relief, deferral, or abatement is requested; and
6061 (iii) who is unable to meet the tax assessed on the person's residential property as the
6062 tax becomes due; and
6063 (b) "residence" includes a mobile home as defined under Section 70D-2-401.
6064 (5) If the claimant is the grantor of a trust holding title to real or tangible personal
6065 property on which an abatement or deferral is claimed, the claimant may claim the portion of
6066 the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of
6067 that portion of the property held in trust for which the claimant proves to the satisfaction of the
6068 county that:
6069 (a) title to the portion of the trust will revert in the claimant upon the exercise of a
6070 power:

- 6071 (i) by:
- 6072 (A) the claimant as grantor of the trust;
- 6073 (B) a nonadverse party; or
- 6074 (C) both the claimant and a nonadverse party; and
- 6075 (ii) regardless of whether the power is a power:
- 6076 (A) to revoke;
- 6077 (B) to terminate;
- 6078 (C) to alter;
- 6079 (D) to amend; or
- 6080 (E) to appoint;
- 6081 (b) the claimant is obligated to pay the taxes on that portion of the trust property
- 6082 beginning January 1 of the year the claimant claims the abatement or deferral; and
- 6083 (c) the claimant meets the requirements under this part for the abatement or deferral.
- 6084 (6) The commission shall adopt rules to implement this section.
- 6085 (7) Any poor person may qualify for:
- 6086 (a) the deferral of taxes under Section 59-2-1108;
- 6087 (b) if the person meets the requisites of this section, for the abatement of taxes under
- 6088 Section 59-2-1107; or
- 6089 (c) both:
- 6090 (i) the deferral described in Subsection (7)(a); and
- 6091 (ii) the abatement described in Subsection (7)(b).
- 6092 Section 106. Section **59-7-602** is amended to read:
- 6093 **59-7-602. Credit for cash contributions to sheltered workshops.**
- 6094 (1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due
- 6095 the state of Utah pursuant to Section 59-7-104, there shall be a tax credit allowed for cash
- 6096 contributions made within the taxable year to nonprofit rehabilitation sheltered workshop
- 6097 facilities for ~~[the disabled]~~ people with a disability operating in Utah which are certified by the
- 6098 Department of Human Services as a qualifying facility. The allowable credit is an amount
- 6099 equal to 50% of the aggregate amount of the cash contributions to qualifying rehabilitation
- 6100 facilities, but in no case shall the credit allowed exceed \$1,000.
- 6101 (2) If a taxpayer has subtracted an amount for cash contributions to a sheltered

6102 workshop when determining federal taxable income, that amount shall be added back under
6103 Section 59-7-105 before a credit may be taken under this section.

6104 Section 107. Section **59-10-1011** is amended to read:

6105 **59-10-1011. Tutoring tax credits for dependents with a disability.**

6106 (1) For purposes of this section:

6107 (a) [~~Disabled dependent~~] "Dependent with a disability" means a person who:

6108 (i) [~~is disabled~~] has a disability under Section 53A-15-301;

6109 (ii) attends a public or private kindergarten, elementary, or secondary school; and

6110 (iii) is eligible to receive disability program money under Section 53A-17a-111.

6111 (b) (i) "Tutoring" means educational services:

6112 (A) approved by an individual education plan team;

6113 (B) provided to a [~~disabled~~] dependent with a disability; and

6114 (C) that supplement classroom instruction the [~~disabled~~] dependent with a disability

6115 described in Subsection (1)(b)(i)(B) receives at a public or private kindergarten, elementary, or
6116 secondary school in the state.

6117 (ii) "Tutoring" does not include:

6118 (A) purchases of instructional books and material; or

6119 (B) payments for attendance at extracurricular activities including sporting events,

6120 musical or dramatic events, speech activities, or driver education.

6121 (2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after
6122 January 1, 1996, but beginning on or before December 31, 2009, a claimant allowed to claim a
6123 [~~disabled~~] dependent with a disability as a dependent under this section may claim for each
6124 [~~disabled~~] dependent with a disability a nonrefundable tutoring tax credit in an amount equal to
6125 25% of the costs paid by the claimant for tutoring the [~~disabled~~] dependent with a disability.

6126 (b) The tutoring tax credit under Subsection (2)(a) may not exceed \$100.

6127 (3) The tutoring tax credit under Subsection (2) may be claimed by a claimant only in
6128 the taxable year in which the claimant pays the tutoring costs for which the tax credit is
6129 claimed.

6130 Section 108. Section **62A-1-108.5** is amended to read:

6131 **62A-1-108.5. Mental illness and intellectual disability examinations --**

6132 **Responsibilities of the department.**

6133 (1) In accomplishing its duties to conduct mental illness and [~~mental retardation~~
6134 intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, the
6135 department shall proceed as outlined in this section and within appropriations authorized by the
6136 Legislature. The executive director may delegate the executive director's responsibilities under
6137 this section to one or more divisions within the department.

6138 (2) When the department is ordered by the court to conduct a mental illness or [~~mental~~
6139 ~~retardation~~] intellectual disability examination, the executive director shall:

6140 (a) direct that the examination be performed at the Utah State Hospital; or

6141 (b) designate at least one examiner, selected under Subsection (3), to examine the
6142 defendant in the defendant's current custody or status.

6143 (3) The department shall establish criteria, in consultation with the Commission on
6144 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
6145 mental illness and [~~mental retardation~~] intellectual disability examinations under Subsection
6146 (2)(b). In making this selection, the department shall follow the provisions of Title 63G,
6147 Chapter 6, Utah Procurement Code.

6148 (4) Nothing in this section prohibits the executive director, at the request of defense
6149 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
6150 Criminal Procedure, and for good cause shown, from proposing a person who has not been
6151 previously selected under Subsection (3) to contract with the department to conduct the
6152 examination. In selecting that person, the criteria of the department established under
6153 Subsection (3) and the provisions of Title 63G, Chapter 6, Utah Procurement Code, shall be
6154 met.

6155 Section 109. Section **62A-2-101** is amended to read:

6156 **62A-2-101. Definitions.**

6157 As used in this chapter:

6158 (1) "Adult day care" means nonresidential care and supervision:

6159 (a) for three or more adults for at least four but less than 24 hours a day; and

6160 (b) that meets the needs of functionally impaired adults through a comprehensive
6161 program that provides a variety of health, social, recreational, and related support services in a
6162 protective setting.

6163 (2) (a) "Boarding school" means a private school that:

- 6164 (i) uses a regionally accredited education program;
- 6165 (ii) provides a residence to the school's students:
- 6166 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 6167 (B) as an ancillary service to educating the students at the school;
- 6168 (iii) has the primary purpose of providing the school's students with an education, as
- 6169 defined in Subsection (2)(b)(i); and
- 6170 (iv) (A) does not provide the treatment or services described in Subsection (26)(a); or
- 6171 (B) provides the treatment or services described in Subsection (26)(a) on a limited
- 6172 basis, as described in Subsection (2)(b)(ii).
- 6173 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for
- 6174 one or more of grades kindergarten through 12th grade.
- 6175 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or
- 6176 services described in Subsection (26)(a) on a limited basis if:
- 6177 (A) the treatment or services described in Subsection (26)(a) are provided only as an
- 6178 incidental service to a student; and
- 6179 (B) the school does not:
- 6180 (I) specifically solicit a student for the purpose of providing the treatment or services
- 6181 described in Subsection (26)(a); or
- 6182 (II) have a primary purpose of providing the services described in Subsection (26)(a).
- 6183 (c) "Boarding school" does not include a therapeutic school.
- 6184 (3) "Certified local inspector" means a person certified by the office, pursuant to
- 6185 Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).
- 6186 (4) "Certified local inspector applicant" means a person for which designation as a
- 6187 certified local inspector is sought under Section 62A-2-108.3.
- 6188 (5) "Child" means a person under 18 years of age.
- 6189 (6) "Child placing" means receiving, accepting, or providing custody or care for any
- 6190 child, temporarily or permanently, for the purpose of:
- 6191 (a) finding a person to adopt the child;
- 6192 (b) placing the child in a home for adoption; or
- 6193 (c) foster home placement.
- 6194 (7) "Client" means an individual who receives or has received services from a licensee.

- 6195 (8) "Day treatment" means specialized treatment that is provided to:
6196 (a) a client less than 24 hours a day; and
6197 (b) four or more persons who:
6198 (i) are unrelated to the owner or provider; and
6199 (ii) have emotional, psychological, developmental, physical, or behavioral
6200 dysfunctions, impairments, or chemical dependencies.
- 6201 (9) "Department" means the Department of Human Services.
- 6202 (10) "Direct access" means that an individual has, or likely will have, contact with or
6203 access to a child or vulnerable adult that provides the individual with an opportunity for
6204 personal communication or touch.
- 6205 (11) "Director" means the director of the Office of Licensing.
- 6206 (12) "Domestic violence" is as defined in Section 77-36-1.
- 6207 (13) "Domestic violence treatment program" means a nonresidential program designed
6208 to provide psychological treatment and educational services to perpetrators and victims of
6209 domestic violence.
- 6210 (14) "Elder adult" means a person 65 years of age or older.
- 6211 (15) "Executive director" means the executive director of the department.
- 6212 (16) "Foster home" means a temporary residential living environment for the care of:
6213 (a) fewer than four foster children in the home of a licensed or certified foster parent;
6214 or
6215 (b) four or more children in the home of a licensed or certified foster parent if the
6216 children are siblings.
- 6217 (17) (a) "Human services program" means a:
6218 (i) foster home;
6219 (ii) therapeutic school;
6220 (iii) youth program;
6221 (iv) resource family home; or
6222 (v) facility or program that provides:
6223 (A) secure treatment;
6224 (B) inpatient treatment;
6225 (C) residential treatment;

- 6226 (D) residential support;
- 6227 (E) adult day care;
- 6228 (F) day treatment;
- 6229 (G) outpatient treatment;
- 6230 (H) domestic violence treatment;
- 6231 (I) child placing services;
- 6232 (J) social detoxification; or
- 6233 (K) any other human services that are required by contract with the department to be
- 6234 licensed with the department.
- 6235 (b) "Human services program" does not include a boarding school.
- 6236 (18) "Licensee" means a person or human services program licensed by the office.
- 6237 (19) "Local government" means a:
- 6238 (a) city; or
- 6239 (b) county.
- 6240 (20) "Minor" has the same meaning as "child."
- 6241 (21) "Office" means the Office of Licensing within the Department of Human Services.
- 6242 (22) "Outpatient treatment" means individual, family, or group therapy or counseling
- 6243 designed to improve and enhance social or psychological functioning for those whose physical
- 6244 and emotional status allows them to continue functioning in their usual living environment.
- 6245 (23) (a) "Person associated with the licensee" means a person:
- 6246 (i) affiliated with a licensee as an owner, director, member of the governing body,
- 6247 employee, agent, provider of care, or volunteer; or
- 6248 (ii) applying to become affiliated with a licensee in any capacity listed under
- 6249 Subsection (23)(a)(i).
- 6250 (b) Notwithstanding Subsection (23)(a), "person associated with the licensee" does not
- 6251 include an individual serving on the following bodies unless that individual has direct access to
- 6252 children or vulnerable adults:
- 6253 (i) a local mental health authority under Section 17-43-301;
- 6254 (ii) a local substance abuse authority under Section 17-43-201; or
- 6255 (iii) a board of an organization operating under a contract to provide:
- 6256 (A) mental health or substance abuse programs; or

- 6257 (B) services for the local mental health authority or substance abuse authority.
- 6258 (c) "Person associated with the licensee" does not include a guest or visitor whose
6259 access to children or vulnerable adults is directly supervised by the licensee at all times.
- 6260 (24) "Regular business hours" means:
- 6261 (a) the hours during which services of any kind are provided to a client; or
- 6262 (b) the hours during which a client is present at the facility of a licensee.
- 6263 (25) (a) "Residential support" means arranging for or providing the necessities of life
6264 as a protective service to individuals or families who [~~are disabled~~] have a disability or who are
6265 experiencing a dislocation or emergency that prevents them from providing these services for
6266 themselves or their families.
- 6267 (b) "Residential support" includes providing a supervised living environment for
6268 persons with:
- 6269 (i) dysfunctions or impairments that are:
- 6270 (A) emotional;
- 6271 (B) psychological;
- 6272 (C) developmental; or
- 6273 (D) behavioral; or
- 6274 (ii) chemical dependencies.
- 6275 (c) Treatment is not a necessary component of residential support.
- 6276 (d) "Residential support" does not include residential services that are performed:
- 6277 (i) exclusively under contract with the Division of Services for People with
6278 Disabilities; and
- 6279 (ii) in a facility that serves less than four individuals.
- 6280 (26) (a) "Residential treatment" means a 24-hour group living environment for four or
6281 more individuals unrelated to the owner or provider that offers room or board and specialized
6282 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
6283 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
6284 impairments, or chemical dependencies.
- 6285 (b) "Residential treatment" does not include a:
- 6286 (i) boarding school; or
- 6287 (ii) foster home.

6288 (27) "Residential treatment program" means a human services program that provides:

6289 (a) residential treatment; or

6290 (b) secure treatment.

6291 (28) (a) "Secure treatment" means 24-hour specialized residential treatment or care for

6292 persons whose current functioning is such that they cannot live independently or in a less

6293 restrictive environment.

6294 (b) "Secure treatment" differs from residential treatment to the extent that it requires

6295 intensive supervision, locked doors, and other security measures that are imposed on residents

6296 with neither their consent nor control.

6297 (29) "Social detoxification" means short-term residential services for persons who are

6298 experiencing or have recently experienced drug or alcohol intoxication, that are provided

6299 outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility

6300 Licensing and Inspection Act, and that include:

6301 (a) room and board for persons who are unrelated to the owner or manager of the

6302 facility;

6303 (b) specialized rehabilitation to acquire sobriety; and

6304 (c) aftercare services.

6305 (30) "Substance abuse treatment program" means a program:

6306 (a) designed to provide:

6307 (i) specialized drug or alcohol treatment;

6308 (ii) rehabilitation; or

6309 (iii) habilitation services; and

6310 (b) that provides the treatment or services described in Subsection (30)(a) to persons

6311 with:

6312 (i) a diagnosed substance abuse disorder; or

6313 (ii) chemical dependency disorder.

6314 (31) "Therapeutic school" means a residential group living facility:

6315 (a) for four or more individuals that are not related to:

6316 (i) the owner of the facility; or

6317 (ii) the primary service provider of the facility;

6318 (b) that serves students who have a history of failing to function:

- 6319 (i) at home;
- 6320 (ii) in a public school; or
- 6321 (iii) in a nonresidential private school; and
- 6322 (c) that offers:
 - 6323 (i) room and board; and
 - 6324 (ii) an academic education integrated with:
 - 6325 (A) specialized structure and supervision; or
 - 6326 (B) services or treatment related to:
 - 6327 (I) a disability;
 - 6328 (II) emotional development;
 - 6329 (III) behavioral development;
 - 6330 (IV) familial development; or
 - 6331 (V) social development.
- 6332 (32) "Unrelated persons" means persons other than parents, legal guardians,
- 6333 grandparents, brothers, sisters, uncles, or aunts.
- 6334 (33) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 6335 permanent mental or physical impairment that substantially affects the person's ability to:
 - 6336 (a) provide personal protection;
 - 6337 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - 6338 (c) obtain services necessary for health, safety, or welfare;
 - 6339 (d) carry out the activities of daily living;
 - 6340 (e) manage the adult's own resources; or
 - 6341 (f) comprehend the nature and consequences of remaining in a situation of abuse,
 - 6342 neglect, or exploitation.
- 6343 (34) (a) "Youth program" means a nonresidential program designed to provide
- 6344 behavioral, substance abuse, or mental health services to minors that:
 - 6345 (i) serves adjudicated or nonadjudicated youth;
 - 6346 (ii) charges a fee for its services;
 - 6347 (iii) may or may not provide host homes or other arrangements for overnight
 - 6348 accommodation of the youth;
 - 6349 (iv) may or may not provide all or part of its services in the outdoors;

6350 (v) may or may not limit or censor access to parents or guardians; and

6351 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
6352 minor's own free will.

6353 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
6354 Scouts, 4-H, and other such organizations.

6355 Section 110. Section **62A-2-120** is amended to read:

6356 **62A-2-120. Criminal background checks -- Direct access to children or**
6357 **vulnerable adults.**

6358 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
6359 license renewal under this chapter shall submit to the office the names and other identifying
6360 information, which may include fingerprints, of all persons associated with the licensee, as
6361 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

6362 (b) The Criminal Investigations and Technical Services Division of the Department of
6363 Public Safety, or the office as authorized under Section 53-10-108, shall process the
6364 information described in Subsection (1)(a) to determine whether the individual has been
6365 convicted of any crime.

6366 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
6367 in Utah for the five years immediately preceding the day on which the information referred to
6368 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
6369 national criminal history record check. The fingerprints shall be submitted to the FBI through
6370 the Criminal Investigations and Technical Services Division.

6371 (d) An individual is not required to comply with Subsection (1)(c) if:

6372 (i) the individual continuously lived in Utah for the five years immediately preceding
6373 the day on which the information described in Subsection (1)(a) is submitted to the office,
6374 except for time spent outside of the United States and its territories; and

6375 (ii) the background check of the individual is being conducted for a purpose other than
6376 a purpose described in Subsection (1)(f).

6377 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
6378 States and its territories during the five years immediately preceding the day on which the
6379 information described in Subsection (1)(a) is submitted to the office, the office shall require the
6380 applicant to submit documentation establishing whether the applicant was convicted of a crime

6381 during the time that the applicant spent outside of the United States and its territories.

6382 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
6383 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
6384 FBI national criminal history records check, through the Criminal Investigations and Technical
6385 Services Division, if the background check of the applicant is being conducted for the purpose
6386 of:

6387 (i) licensing a prospective foster home; or

6388 (ii) approving a prospective adoptive placement of a child in state custody.

6389 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
6390 this section, if the background check of an applicant described in Subsection (1)(a) is being
6391 conducted for the purpose of licensing a prospective foster home or approving a prospective
6392 adoptive placement of a child in state custody, the office shall:

6393 (i) check the child abuse and neglect registry in each state where each prospective
6394 foster parent or prospective adoptive parent resided in the five years immediately preceding the
6395 day on which the prospective foster parent or prospective adoptive parent applied to be a foster
6396 parent or adoptive parent, to determine whether the prospective foster parent or prospective
6397 adoptive parent is listed in the registry as having a substantiated or supported finding of child
6398 abuse or neglect; and

6399 (ii) check the child abuse and neglect registry in each state where each adult living in
6400 the home of the prospective foster parent or prospective adoptive parent described in
6401 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
6402 prospective foster parent or prospective adoptive parent applied to be a foster parent or
6403 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
6404 or supported finding of child abuse or neglect.

6405 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

6406 (i) federal law or rule permits otherwise; or

6407 (ii) the requirements would prohibit the Division of Child and Family Services or a
6408 court from placing a child with:

6409 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

6410 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
6411 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)

6412 and (g).

6413 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
6414 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
6415 background checks.

6416 (2) The office shall approve a person for whom identifying information is submitted
6417 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
6418 program if:

6419 (a) (i) the person is found to have no criminal history record; or

6420 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
6421 or infractions not involving any of the offenses described in Subsection (3); and

6422 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
6423 before the date of the search;

6424 (b) the person is not listed in the statewide database of the Division of Aging and Adult
6425 Services created by Section 62A-3-311.1;

6426 (c) juvenile court records do not show that a court made a substantiated finding, under
6427 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

6428 (d) the person is not listed in the Licensing Information System of the Division of
6429 Child and Family Services created by Section 62A-4a-1006;

6430 (e) the person has not pled guilty or no contest to a pending charge for any:

6431 (i) felony;

6432 (ii) misdemeanor listed in Subsection (3); or

6433 (iii) infraction listed in Subsection (3); and

6434 (f) for a person described in Subsection (1)(g), the registry check described in
6435 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
6436 of another state as having a substantiated or supported finding of a severe type of child abuse or
6437 neglect as defined in Section 62A-4a-1002.

6438 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
6439 date of conviction, the office may not approve a person to have direct access to children or
6440 vulnerable adults in the licensee's human services program if that person has been convicted of
6441 an offense, whether a felony, misdemeanor, or infraction, that is:

6442 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

- 6443 (b) a violation of any pornography law, including sexual exploitation of a minor;
- 6444 (c) prostitution;
- 6445 (d) included in:
 - 6446 (i) Title 76, Chapter 5, Offenses Against the Person;
 - 6447 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or
 - 6448 (iii) Title 76, Chapter 7, Offenses Against the Family;
- 6449 (e) a violation of Section 76-6-103, aggravated arson;
- 6450 (f) a violation of Section 76-6-203, aggravated burglary;
- 6451 (g) a violation of Section 76-6-302, aggravated robbery; or
- 6452 (h) a conviction for an offense committed outside of the state that, if committed in the
- 6453 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).
- 6454 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
- 6455 information is submitted under Subsection (1) is not approved by the office under Subsection
- 6456 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
- 6457 office shall conduct a comprehensive review of criminal and court records and related
- 6458 circumstances if the reason the approval is not granted is due solely to one or more of the
- 6459 following:
 - 6460 (i) a conviction for:
 - 6461 (A) any felony not listed in Subsection (3);
 - 6462 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
 - 6463 date of the search;
 - 6464 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
 - 6465 a similar statute in another state; or
 - 6466 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
 - 6467 have passed since the date of conviction;
 - 6468 (ii) a plea of guilty or no contest to a pending:
 - 6469 (A) felony;
 - 6470 (B) misdemeanor listed in Subsection (3); or
 - 6471 (C) infraction listed in Subsection (3);
 - 6472 (iii) the person is listed in the statewide database of the Division of Aging and Adult
 - 6473 Services created by Section 62A-3-311.1;

6474 (iv) juvenile court records show that a court made a substantiated finding, under
6475 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

6476 (v) the person is listed in the Licensing Information System of the Division of Child
6477 and Family Services created by Section 62A-4a-1006; or

6478 (vi) the person is listed in a child abuse or neglect registry of another state as having a
6479 substantiated or supported finding of a severe type of child abuse or neglect as defined in
6480 Section 62A-4a-1002.

6481 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

6482 (i) the date of the offense or incident;

6483 (ii) the nature and seriousness of the offense or incident;

6484 (iii) the circumstances under which the offense or incident occurred;

6485 (iv) the age of the perpetrator when the offense or incident occurred;

6486 (v) whether the offense or incident was an isolated or repeated incident;

6487 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
6488 adult, including:

6489 (A) actual or threatened, nonaccidental physical or mental harm;

6490 (B) sexual abuse;

6491 (C) sexual exploitation; and

6492 (D) negligent treatment;

6493 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
6494 treatment received, or additional academic or vocational schooling completed, by the person;
6495 and

6496 (viii) any other pertinent information.

6497 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
6498 shall approve the person who is the subject of the review to have direct access to children or
6499 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
6500 vulnerable adult.

6501 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
6502 office may make rules, consistent with this chapter, defining procedures for the comprehensive
6503 review described in this Subsection (4).

6504 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person

6505 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
6506 the supervising.

6507 (b) A licensee may not permit any person to have direct access to a child or a
6508 vulnerable adult unless, subject to Subsection (5)(c), that person is:

6509 (i) associated with the licensee and:

6510 (A) approved by the office to have direct access to children or vulnerable adults under
6511 this section; or

6512 (B) (I) the office has not determined whether to approve that person to have direct
6513 access to children or vulnerable adults;

6514 (II) the information described in Subsection (1)(a), relating to that person, is submitted
6515 to the department; and

6516 (III) that person is directly supervised by a person associated with the licensee who is
6517 approved by the office to have direct access to children or vulnerable adults under this section;

6518 (ii) (A) not associated with the licensee; and

6519 (B) directly supervised by a person associated with the licensee who is approved by the
6520 office to have direct access to children or vulnerable adults under this section;

6521 (iii) the parent or guardian of the child or vulnerable adult; or

6522 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
6523 have direct access to the child or vulnerable adult.

6524 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
6525 or a vulnerable adult if that person is prohibited by court order from having that access.

6526 (6) (a) Within 30 days after receiving the identifying information for a person under
6527 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
6528 with whom the person is associated of:

6529 (i) the office's decision regarding its background screening clearance and findings; and

6530 (ii) a list of any convictions found in the search.

6531 (b) With the notice described in Subsection (6)(a), the office shall also give to the
6532 person the details of any comprehensive review conducted under Subsection (4).

6533 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
6534 direct access to children or vulnerable adults, the notice shall further advise the persons to
6535 whom the notice is given that either the person or the licensee or applicant with whom the

6536 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
6537 department's Office of Administrative Hearings, to challenge the office's decision.

6538 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
6539 office shall make rules, consistent with this chapter:

6540 (i) defining procedures for the challenge of its background screening decision
6541 described in this Subsection (6); and

6542 (ii) expediting the process for renewal of a license under the requirements of this
6543 section and other applicable sections.

6544 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
6545 an initial license, or license renewal, to operate a substance abuse program that provides
6546 services to adults only.

6547 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
6548 license a person as a prospective foster parent or a prospective adoptive parent if the person has
6549 been convicted of:

6550 (i) a felony involving conduct that constitutes any of the following:

6551 (A) child abuse, as described in Section 76-5-109;

6552 (B) commission of domestic violence in the presence of a child, as described in Section
6553 76-5-109.1;

6554 (C) abuse or neglect of a [~~disabled~~] child with a disability, as described in Section
6555 76-5-110;

6556 (D) endangerment of a child, as described in Section 76-5-112.5;

6557 (E) aggravated murder, as described in Section 76-5-202;

6558 (F) murder, as described in Section 76-5-203;

6559 (G) manslaughter, as described in Section 76-5-205;

6560 (H) child abuse homicide, as described in Section 76-5-208;

6561 (I) homicide by assault, as described in Section 76-5-209;

6562 (J) kidnapping, as described in Section 76-5-301;

6563 (K) child kidnapping, as described in Section 76-5-301.1;

6564 (L) aggravated kidnapping, as described in Section 76-5-302;

6565 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

6566 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

- 6567 (O) aggravated arson, as described in Section 76-6-103;
- 6568 (P) aggravated burglary, as described in Section 76-6-203;
- 6569 (Q) aggravated robbery, as described in Section 76-6-302; or
- 6570 (R) domestic violence, as described in Section 77-36-1; or
- 6571 (ii) an offense committed outside the state that, if committed in the state, would
- 6572 constitute a violation of an offense described in Subsection (8)(a)(i).
- 6573 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
- 6574 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
- 6575 immediately preceding the day on which the person would otherwise be approved or licensed,
- 6576 the person has been convicted of a felony involving conduct that constitutes any of the
- 6577 following:
- 6578 (i) aggravated assault, as described in Section 76-5-103;
- 6579 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 6580 (iii) mayhem, as described in Section 76-5-105;
- 6581 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 6582 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 6583 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 6584 Act;
- 6585 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 6586 Precursor Act; or
- 6587 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 6588 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
- 6589 the conflicting provision of Section 62A-2-120.5 shall govern.
- 6590 Section 111. Section **62A-2-122** is amended to read:
- 6591 **62A-2-122. Access to vulnerable adult abuse and neglect information.**
- 6592 (1) For purposes of this section:
- 6593 (a) "Direct service worker" is as defined in Section 62A-5-101.
- 6594 (b) "Personal care attendant" is as defined in Section 62A-3-101.
- 6595 (2) With respect to a licensee, a certified local inspector applicant, a direct service
- 6596 worker, or a personal care attendant, the department may access the database created by Section
- 6597 62A-3-311.1 for the purpose of:

6598 (a) (i) determining whether a person associated with a licensee, with direct access to
6599 vulnerable adults, has a supported or substantiated finding of:

- 6600 (A) abuse;
- 6601 (B) neglect; or
- 6602 (C) exploitation; and

6603 (ii) informing a licensee that a person associated with the licensee has a supported or
6604 substantiated finding of:

- 6605 (A) abuse;
- 6606 (B) neglect; or
- 6607 (C) exploitation;

6608 (b) (i) determining whether a certified local inspector applicant has a supported or
6609 substantiated finding of:

- 6610 (A) abuse;
- 6611 (B) neglect; or
- 6612 (C) exploitation; and

6613 (ii) informing a local government that a certified local inspector applicant has a
6614 supported or substantiated finding of:

- 6615 (A) abuse;
- 6616 (B) neglect; or
- 6617 (C) exploitation;

6618 (c) (i) determining whether a direct service worker has a supported or substantiated
6619 finding of:

- 6620 (A) abuse;
- 6621 (B) neglect; or
- 6622 (C) exploitation; and

6623 (ii) informing a direct service worker or the direct service worker's employer that the
6624 direct service worker has a supported or substantiated finding of:

- 6625 (A) abuse;
- 6626 (B) neglect; or
- 6627 (C) exploitation; or

6628 (d) (i) determining whether a personal care attendant has a supported or substantiated

6629 finding of:

6630 (A) abuse;

6631 (B) neglect; or

6632 (C) exploitation; and

6633 (ii) informing a person described in Subsections 62A-3-101[(8)] (9)(a)(i) through (iv)

6634 that a personal care attendant has a supported or substantiated finding of:

6635 (A) abuse;

6636 (B) neglect; or

6637 (C) exploitation.

6638 (3) After receiving identifying information for a person under Subsection

6639 62A-2-120(1), the department shall process the information for the purposes described in

6640 Subsection (2).

6641 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative

6642 Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect,

6643 or Exploitation of a Vulnerable [~~Adults~~] Adult, defining the circumstances under which a

6644 person may have direct access or provide services to vulnerable adults when the person is listed

6645 in the statewide database of the Division of Aging and Adult Services created by Section

6646 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

6647 Section 112. Section **62A-4a-1010** is amended to read:

6648 **CHAPTER 3. AGING AND ADULT SERVICES**

6649 **Part 3. Abuse, Neglect, or Exploitation of a Vulnerable Adult**

6650 **62A-4a-1010. Notice and opportunity for court hearing for persons listed in**

6651 **Licensing Information System.**

6652 (1) Persons whose names were listed on the Licensing Information System as of May

6653 6, 2002 and who have not been the subject of a court determination with respect to the alleged

6654 incident of abuse or neglect may at any time:

6655 (a) request review by the division of their case and removal of their name from the

6656 Licensing Information System pursuant to Subsection (3); or

6657 (b) file a petition for an evidentiary hearing and a request for a finding of

6658 unsubstantiated or without merit.

6659 (2) Subsection (1) does not apply to an individual who has been the subject of any of

6660 the following court determinations with respect to the alleged incident of abuse or neglect:

6661 (a) conviction;

6662 (b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;

6663 (c) plea of guilty;

6664 (d) plea of guilty [~~and mentally ill~~] with a mental illness; or

6665 (e) no contest.

6666 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,

6667 2002, requests removal of the alleged perpetrator's name from the Licensing Information

6668 System, the division shall, within 30 days:

6669 (a) (i) review the case to determine whether the incident of alleged abuse or neglect

6670 qualifies as:

6671 (A) a severe type of child abuse or neglect;

6672 (B) chronic abuse; or

6673 (C) chronic neglect; and

6674 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect

6675 described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from

6676 the Licensing Information System; or

6677 (b) determine whether to file a petition for substantiation.

6678 (4) If the division decides to file a petition, that petition must be filed no more than 14

6679 days after the decision.

6680 (5) The juvenile court shall act on the petition as provided in Subsection 78A-6-323(3).

6681 (6) If a person whose name appears on the Licensing Information System prior to May

6682 6, 2002 files a petition pursuant to Section 78A-6-323 during the time that an alleged

6683 perpetrator's application for clearance to work with children or vulnerable adults is pending, the

6684 court shall hear the matter on an expedited basis.

6685 Section 113. Section **62A-5-101** is amended to read:

6686 **62A-5-101. Definitions.**

6687 As used in this chapter:

6688 (1) "Approved provider" means a person approved by the division to provide

6689 home-based services.

6690 (2) (a) "Brain injury" means an acquired injury to the brain that is neurological in

6691 nature, including a cerebral vascular accident.

6692 (b) "Brain injury" does not include a deteriorating disease.

6693 (3) "Designated [~~mental retardation~~] intellectual disability professional" means:

6694 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
6695 who:

6696 (i) (A) has at least one year of specialized training in working with persons with
6697 [~~mental retardation~~] an intellectual disability; or

6698 (B) has at least one year of clinical experience with persons with [~~mental retardation~~]
6699 an intellectual disability; and

6700 (ii) is designated by the division as specially qualified, by training and experience, in
6701 the treatment of [~~mental retardation~~] an intellectual disability; or

6702 (b) a clinical social worker, certified social worker, marriage and family therapist, or
6703 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
6704 Practice Act, who:

6705 (i) has at least two years of clinical experience with persons with [~~mental retardation~~]
6706 an intellectual disability; and

6707 (ii) is designated by the division as specially qualified, by training and experience, in
6708 the treatment of [~~mental retardation~~] an intellectual disability.

6709 (4) "Deteriorating disease" includes:

6710 (a) multiple sclerosis;

6711 (b) muscular dystrophy;

6712 (c) Huntington's chorea;

6713 (d) Alzheimer's disease;

6714 (e) ataxia; or

6715 (f) cancer.

6716 (5) "Developmental center" means the Utah State Developmental Center, established in
6717 accordance with Part 2, Utah State Developmental Center.

6718 (6) "Direct service worker" means a person who provides services to a person with a
6719 disability:

6720 (a) when the services are rendered in:

6721 (i) the physical presence of the person with a disability; or

- 6722 (ii) a location where the person rendering the services has access to the physical
6723 presence of the person with a disability; and
- 6724 (b) (i) under a contract with the division;
6725 (ii) under a grant agreement with the division; or
6726 (iii) as an employee of the division.
- 6727 (7) "Director" means the director of the Division of Services for People with
6728 Disabilities.
- 6729 (8) (a) "Disability" means a severe, chronic disability that:
6730 (i) is attributable to:
6731 (A) [~~mental retardation~~] an intellectual disability;
6732 (B) a condition that qualifies a person as a person with a related condition, as defined
6733 in 42 C.F.R. 435.1009;
6734 (C) a physical disability; or
6735 (D) a brain injury;
6736 (ii) is likely to continue indefinitely;
6737 (iii) (A) for a condition described in Subsection (8)(a)(i)(A), (B), or (C), results in a
6738 substantial functional limitation in three or more of the following areas of major life activity:
6739 (I) self-care;
6740 (II) receptive and expressive language;
6741 (III) learning;
6742 (IV) mobility;
6743 (V) self-direction;
6744 (VI) capacity for independent living; or
6745 (VII) economic self-sufficiency; or
6746 (B) for a condition described in Subsection (8)(a)(i)(D), results in a substantial
6747 limitation in three or more of the following areas:
6748 (I) memory or cognition;
6749 (II) activities of daily life;
6750 (III) judgment and self-protection;
6751 (IV) control of emotions;
6752 (V) communication;

- 6753 (VI) physical health; or
6754 (VII) employment; and
6755 (iv) requires a combination or sequence of special interdisciplinary or generic care,
6756 treatment, or other services that:
6757 (A) may continue throughout life; and
6758 (B) must be individually planned and coordinated.
6759 (b) "Disability" does not include a condition due solely to:
6760 (i) mental illness;
6761 (ii) personality disorder;
6762 (iii) hearing impairment;
6763 (iv) visual impairment;
6764 (v) learning disability;
6765 (vi) behavior disorder;
6766 (vii) substance abuse; or
6767 (viii) the aging process.
6768 (9) "Division" means the Division of Services for People with Disabilities.
6769 (10) "Eligible to receive division services" or "eligibility" means qualification, based
6770 on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive
6771 services that are administered by the division.
6772 (11) "Endorsed program" means a facility or program that:
6773 (a) is operated:
6774 (i) by the division; or
6775 (ii) under contract with the division; or
6776 (b) provides services to a person committed to the division under Part 3, Admission to
6777 ~~[Mental Retardation Facility]~~ an Intermediate Care Facility for People with an Intellectual
6778 Disability.
6779 (12) "Licensed physician" means:
6780 (a) an individual licensed to practice medicine under:
6781 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
6782 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
6783 (b) a medical officer of the United States Government while in this state in the

6784 performance of official duties.

6785 ~~[(13) "Mental retardation" means a significant, subaverage general intellectual~~
6786 ~~functioning, that:]~~

6787 ~~[(a) exists concurrently with deficits in adaptive behavior, and]~~

6788 ~~[(b) is manifested during the developmental period as defined in the current edition of~~
6789 ~~the Diagnostic and Statistical Manual of Mental Disorders, published by the American~~
6790 ~~Psychiatric Association.]~~

6791 ~~[(14) "Mental retardation facility" means a residential facility for a person with mental~~
6792 ~~retardation, that receives state or federal funds under Title XIX of the federal Social Security~~
6793 ~~Act, for the purpose of serving a mentally retarded person in this state.]~~

6794 ~~[(15)] (13) "Physical disability" means a medically determinable physical impairment~~
6795 ~~that has resulted in the functional loss of two or more of a person's limbs.~~

6796 ~~[(16)] (14) "Public funds" means state or federal funds that are disbursed by the~~
6797 ~~division.~~

6798 ~~[(17)] (15) "Resident" means an individual under observation, care, or treatment in [a~~
6799 ~~mental retardation facility] an intermediate care facility for people with an intellectual~~
6800 ~~disability.~~

6801 Section 114. Section **62A-5-103** is amended to read:

6802 **62A-5-103. Responsibility and authority of division.**

6803 (1) For purposes of this section "administer" means to:

6804 (a) plan;

6805 (b) develop;

6806 (c) manage;

6807 (d) monitor; and

6808 (e) conduct certification reviews.

6809 (2) The division has the authority and responsibility to:

6810 (a) administer an array of services and supports for persons with disabilities and their
6811 families throughout the state;

6812 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
6813 Rulemaking Act, that establish eligibility criteria for the services and supports described in
6814 Subsection (2)(a);

6815 (c) consistent with Section 62A-5-206, supervise the programs and facilities of the
6816 Developmental Center;

6817 (d) in order to enhance the quality of life for a person with a disability, establish either
6818 directly, or by contract with private, nonprofit organizations, programs of:

6819 (i) outreach;

6820 (ii) information and referral;

6821 (iii) prevention;

6822 (iv) technical assistance; and

6823 (v) public awareness;

6824 (e) supervise the programs and facilities operated by, or under contract with, the
6825 division;

6826 (f) cooperate with other state, governmental, and private agencies that provide services
6827 to a person with a disability;

6828 (g) subject to Subsection (3), ensure that a person with a disability is not deprived of
6829 that person's constitutionally protected rights without due process procedures designed to
6830 minimize the risk of error when a person with a disability is admitted to ~~[any structured~~
6831 ~~residential mental retardation facility]~~ an intermediate care facility for people with an
6832 intellectual disability, including:

6833 (i) the developmental center; and

6834 (ii) facilities within the community;

6835 (h) determine whether to approve providers;

6836 (i) monitor and sanction approved providers, as specified in the providers' contract;

6837 (j) subject to Section 62A-5-103.5, receive and disburse public funds;

6838 (k) review financial actions of a provider who is a representative payee appointed by
6839 the Social Security Administration;

6840 (l) establish standards and rules for the administration and operation of programs
6841 conducted by, or under contract with, the division;

6842 (m) approve and monitor division programs to insure compliance with the board's rules
6843 and standards;

6844 (n) establish standards and rules necessary to fulfill the division's responsibilities under
6845 Parts 2, Utah State Developmental Center, and 3 ~~[of this chapter]~~, Admission to an

6846 Intermediate Care Facility for People with an Intellectual Disability, with regard to [~~mental~~
6847 ~~retardation facilities~~] an intermediate care facility for people with an intellectual disability;

6848 (o) assess and collect equitable fees for a person who receives services provided under
6849 this chapter;

6850 (p) maintain records of, and account for, the funds described in Subsection (2)(o);

6851 (q) establish and apply rules to determine whether to approve, deny, or defer the
6852 division's services to a person who is:

6853 (i) applying to receive the services; or

6854 (ii) currently receiving the services;

6855 (r) in accordance with state law, establish rules:

6856 (i) relating to [~~a mental retardation facility~~] an intermediate care facility for people with
6857 an intellectual disability that is an endorsed program; and

6858 (ii) governing the admission, transfer, and discharge of a person with a disability;

6859 (s) manage funds for a person residing in a facility operated by the division:

6860 (i) upon request of a parent or guardian of the person; or

6861 (ii) under administrative or court order; and

6862 (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons
6863 with Disabilities.

6864 (3) The due process procedures described in Subsection (2)(g):

6865 (a) shall include initial and periodic reviews to determine the constitutional
6866 appropriateness of the placement; and

6867 (b) with regard to facilities in the community, do not require commitment to the
6868 division.

6869 Section 115. Section **62A-5-104** is amended to read:

6870 **62A-5-104. Director -- Qualifications -- Responsibilities.**

6871 (1) The director of the division shall be appointed by the executive director.

6872 (2) The director shall have a bachelor's degree from an accredited university or college,
6873 be experienced in administration, and be knowledgeable in developmental disabilities, [~~mental~~
6874 ~~retardation~~] intellectual disability, and other disabilities.

6875 (3) The director is the administrative head of the division.

6876 (4) The director shall appoint the superintendent of the developmental center and the

6877 necessary and appropriate administrators for other facilities operated by the division with the
6878 concurrence of the executive director.

6879 Section 116. Section **62A-5-110** is amended to read:

6880 **62A-5-110. Discretionary trusts for persons with disabilities -- Impact on state**
6881 **services.**

6882 (1) For purposes of this section:

6883 (a) "Discretionary trust for a person with disabilities" means a trust:

6884 (i) that is established for the benefit of an individual who, at the time the trust is

6885 created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;

6886 (ii) under which the trustee has discretionary power to determine distributions;

6887 (iii) under which the beneficiary may not control or demand payments unless an abuse
6888 of the trustee's duties or discretion is shown;

6889 (iv) that contains the assets of the beneficiary and is established for the benefit of the
6890 beneficiary by a parent, grandparent, legal guardian, or court;

6891 (v) that is irrevocable, except that the trust document may provide that the trust be
6892 terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;

6893 (vi) that is invalid as to any portion funded by property that is or may be subject to a
6894 lien by the state; and

6895 (vii) providing that, upon the death of the beneficiary, the state will receive all amounts
6896 remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of
6897 the beneficiary.

6898 (b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

6899 (2) A state agency providing services or support to a person with disabilities may:

6900 (a) waive application of Subsection (1)(a)(v) with respect to that individual if it
6901 determines that application of the criteria would place an undue hardship upon that individual;
6902 and

6903 (b) define, by rule, what constitutes "undue hardship" for purposes of this section.

6904 (3) A discretionary trust for a person with disabilities is not liable for reimbursement or
6905 payment to the state or any state agency, for financial aid or services provided to that individual
6906 except:

6907 (a) to the extent that the trust property has been distributed directly to or is otherwise

6908 under the control of the [~~disabled~~] beneficiary with a disability; or

6909 (b) as provided in Subsection (1)(a)(vi).

6910 (4) Property, goods, and services that are purchased or owned by a discretionary trust
6911 for a person with disabilities and that are used or consumed by a [~~disabled~~] beneficiary with a
6912 disability shall not be considered trust property that is distributed to or under the control of the
6913 beneficiary.

6914 (5) The benefits that a person with disabilities is otherwise legally entitled to may not
6915 be reduced, impaired, or diminished in any way because of contribution to a discretionary trust
6916 for that person.

6917 (6) All state agencies shall disregard a discretionary trust for a person with disabilities,
6918 as defined in Subsection (1), as a resource when determining eligibility for services or support
6919 except as, and only to the extent that it is otherwise prohibited by federal law.

6920 (7) This section applies to all discretionary trusts that meet the requirements contained
6921 in Subsection (1) created before, on, or after July 1, 1994.

6922 Section 117. Section **62A-5-201** is amended to read:

6923 **62A-5-201. Utah State Developmental Center.**

6924 (1) [~~The facility for persons with mental retardation~~] The intermediate care facility for
6925 people with an intellectual disability located in American Fork City, Utah County, shall be
6926 known as the "Utah State Developmental Center."

6927 (2) Within appropriations authorized by the Legislature, the role and function of the
6928 developmental center is to:

6929 (a) provide care, services, and treatment to persons described in Subsection (3); and

6930 (b) provide the following services and support to persons with disabilities who do not
6931 reside at the developmental center:

6932 (i) psychiatric testing;

6933 (ii) specialized medical and dental treatment and evaluation;

6934 (iii) family and client special intervention;

6935 (iv) crisis management;

6936 (v) occupational, physical, speech, and audiology services; and

6937 (vi) professional services, such as education, evaluation, and consultation, for families,
6938 public organizations, providers of community and family support services, and courts.

6939 (3) Except as provided in Subsection (6), within appropriations authorized by the
6940 Legislature, and notwithstanding the provisions of Part 3, Admission to [~~Mental Retardation~~
6941 ~~Facility~~] an Intermediate Care Facility for People with an Intellectual Disability, only the
6942 following persons may be residents of, be admitted to, or receive care, services, or treatment at
6943 the developmental center:

6944 (a) persons with [~~mental retardation~~] an intellectual disability;
6945 (b) persons who receive services and supports under Subsection (2)(b); and
6946 (c) persons who require at least one of the following services from the developmental

6947 center:

6948 (i) continuous medical care;
6949 (ii) intervention for conduct that is dangerous to self or others; or
6950 (iii) temporary residential assessment and evaluation.

6951 (4) (a) Except as provided in Subsection (6), the division shall, in the division's
6952 discretion:

6953 (i) place residents from the developmental center into appropriate less restrictive
6954 placements; and

6955 (ii) determine each year the number to be placed based upon the individual assessed
6956 needs of the residents.

6957 (b) The division shall confer with parents and guardians to ensure the most appropriate
6958 placement for each resident.

6959 (5) Except as provided in Subsection (7), within appropriations authorized by the
6960 Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to
6961 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
6962 Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive
6963 care, services, or treatment at the developmental center only if the director certifies in writing
6964 that the developmental center is the most appropriate placement for that person.

6965 (6) (a) If the division determines, pursuant to Utah's [~~Home and Community-Based~~
6966 ~~Services Waiver for Individuals with Mental Retardation and Other Related Conditions~~]
6967 Community Supports Waiver (CSW) for Individuals with Intellectual Disabilities and Other
6968 Related Conditions, that a person who otherwise qualifies for placement in an [~~ICF/MR~~]
6969 intermediate care facility for people with an intellectual disability should receive services in a

6970 home or community-based setting, the division shall:

6971 (i) if the person does not have a legal representative or legal guardian:

6972 (A) inform the person of any feasible alternatives under the waiver; and

6973 (B) give the person the choice of being placed in an [ICF/MR] intermediate care

6974 facility for people with an intellectual disability or receiving services in a home or

6975 community-based setting; or

6976 (ii) if the person has a legal representative or legal guardian:

6977 (A) inform the legal representative or legal guardian of any feasible alternatives under

6978 the waiver; and

6979 (B) give the legal representative or legal guardian the choice of having the person

6980 placed in an [ICF/MR] intermediate care facility for people with an intellectual disability or

6981 receiving services in a home or community-based setting.

6982 (b) If a person chooses, under Subsection (6)(a)(i), to be placed in an [ICF/MR]

6983 intermediate care facility for people with an intellectual disability instead of receiving services

6984 in a home or community-based setting, the division shall:

6985 (i) ask the person whether the person prefers to be placed in the developmental center

6986 rather than a private [ICF/MR] intermediate care facility for people with an intellectual

6987 disability; and

6988 (ii) if the person expresses a preference to be placed in the developmental center:

6989 (A) place the person in the developmental center if the cost of placing the person in the

6990 developmental center is equal to, or less than, the cost of placing the person in a private

6991 [ICF/MR] intermediate care facility for people with an intellectual disability; or

6992 (B) (I) strongly consider the person's preference to be placed in the developmental

6993 center if the cost of placing the person in the developmental center exceeds the cost of placing

6994 the person in a private [ICF/MR] intermediate care facility for people with an intellectual

6995 disability; and

6996 (II) place the person in the developmental center or a private [ICF/MR] intermediate

6997 care facility for people with an intellectual disability.

6998 (c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to

6999 have the person placed in an [ICF/MR] intermediate care facility for people with an intellectual

7000 disability instead of receiving services in a home or community-based setting, the division

7001 shall:

7002 (i) ask the legal representative or legal guardian whether the legal representative or
7003 legal guardian prefers to have the person placed in the developmental center rather than a
7004 private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; and

7005 (ii) if the legal representative or legal guardian expresses a preference to have the
7006 person placed in the developmental center:

7007 (A) place the person in the developmental center if the cost of placing the person in the
7008 developmental center is equal to, or less than, the cost of placing the person in a private
7009 [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; or

7010 (B) (I) strongly consider the legal representative's or legal guardian's preference for the
7011 person's placement if the cost of placing the person in the developmental center exceeds the
7012 cost of placing the person in a private [~~ICF/MR~~] intermediate care facility for people with an
7013 intellectual disability; and

7014 (II) place the person in the developmental center or a private [~~ICF/MR~~] intermediate
7015 care facility for people with an intellectual disability.

7016 (7) The certification described in Subsection (5) is not required for a person who
7017 receives services and support under Subsection (2)(b).

7018 Section 118. Section **62A-5-206** is amended to read:

7019 **62A-5-206. Powers and duties of division.**

7020 The powers and duties of the division, with respect to the developmental center are as
7021 follows:

7022 (1) to establish rules, not inconsistent with law, for the government of the
7023 developmental center;

7024 (2) to receive, take, and hold property, both real and personal, in trust for the state for
7025 the use and benefit of the developmental center;

7026 (3) to establish rules governing the admission and discharge of persons with [~~mental~~
7027 ~~retardation~~] an intellectual disability in accordance with state law;

7028 (4) to employ necessary medical and other professional personnel to assist in
7029 establishing rules relating to the developmental center and to the treatment and training of
7030 persons with [~~mental retardation~~] an intellectual disability at the center;

7031 (5) to transfer a person who has been committed to the developmental center under

7032 Part 3 of this chapter to any other facility or program operated by or under contract with the
7033 division, after careful evaluation of the treatment needs of that person, if the facilities or
7034 programs available meet the needs indicated, and if transfer would be in the best interest of that
7035 person. A person transferred shall remain under the jurisdiction of the division;

7036 (6) the developmental center may receive a person who meets the requirements of
7037 Subsection 62A-5-201(3) from any other facility or program operated by or under contract with
7038 the division, after careful evaluation of the treatment needs of that person, if the facility or
7039 programs of the developmental center meet those needs, and if transfer would be in the best
7040 interest of that person. A person so received by the developmental center remains under the
7041 jurisdiction of the division;

7042 (7) to manage funds for a person residing in the developmental center, upon request by
7043 that person's parent or guardian, or upon administrative or court order;

7044 (8) to charge and collect a fair and equitable fee from developmental center residents,
7045 parents who have the ability to pay, or guardians where funds for that purpose are available;
7046 and

7047 (9) supervision and administration of security responsibilities for the developmental
7048 center is vested in the division. The executive director may designate, as special function
7049 officers, individuals to perform special security functions for the developmental center that
7050 require peace officer authority. Those special function officers may not become or be
7051 designated as members of the Public Safety Retirement System.

7052 Section 119. Section **62A-5-207** is amended to read:

7053 **62A-5-207. Superintendent -- Qualifications.**

7054 The superintendent of the developmental center, appointed in accordance with
7055 Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or
7056 college, be experienced in administration, and be knowledgeable in developmental disabilities
7057 and [~~mental retardation~~] intellectual disability.

7058 Section 120. Section **62A-5-302** is amended to read:

7059 **Part 3. Admission to an Intermediate Care Facility for People with an Intellectual**
7060 **Disability**

7061 **62A-5-302. Division responsibility.**

7062 The division is responsible:

7063 (1) for the supervision, care, and treatment of persons with [~~mental retardation~~] an
7064 intellectual disability in this state who are committed to the division's jurisdiction under the
7065 provisions of this part; and

7066 (2) to evaluate and determine the most appropriate, least restrictive setting for [~~a~~
7067 ~~mentally retarded~~] an individual with an intellectual disability.

7068 Section 121. Section **62A-5-304** is amended to read:

7069 **62A-5-304. Limited admission of persons convicted of felony offenses.**

7070 A person with [~~mental retardation~~] an intellectual disability who has been convicted of
7071 a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may
7072 not be admitted to [~~a mental retardation facility~~] an intermediate care facility for people with an
7073 intellectual disability unless it is determined by the division, in accordance with the provisions
7074 of this part and other state law, that the person may benefit from treatment in that facility.

7075 Section 122. Section **62A-5-305** is amended to read:

7076 **62A-5-305. Residency requirements -- Transportation of person to another state.**

7077 (1) A person with [~~mental retardation~~] an intellectual disability who has a parent or
7078 guardian residing in this state may be admitted to [~~a mental retardation facility~~] an intermediate
7079 care facility for people with an intellectual disability in accordance with the provisions of this
7080 part.

7081 (2) If a person with [~~mental retardation~~] an intellectual disability enters Utah from
7082 another state, the division may have that person transported to the home of a relative or friend
7083 located outside of this state, or to an appropriate facility in the state where the person with
7084 [~~mental retardation~~] the intellectual disability is domiciled. This section does not prevent a
7085 person with [~~mental retardation~~] an intellectual disability who is temporarily located in this
7086 state from being temporarily admitted or committed to [~~a mental retardation facility~~] an
7087 intermediate care facility for people with an intellectual disability in this state.

7088 Section 123. Section **62A-5-308** is amended to read:

7089 **62A-5-308. Commitment -- Persons under age 18.**

7090 Beginning July 1, 1993, the director of the division or [~~his~~] the director's designee, may
7091 commit an individual under 18 years of age who has [~~mental retardation~~] an intellectual
7092 disability or symptoms of [~~mental retardation~~] an intellectual disability, to the division for
7093 observation, diagnosis, care, and treatment if that commitment is based on:

7094 (1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings
7095 for involuntary commitment of an individual under 18 years of age may be commenced by
7096 filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court
7097 has jurisdiction to proceed in the same manner and with the same authority as the district court;
7098 or

7099 (2) an emergency commitment in accordance with the provisions of Section
7100 62A-5-311.

7101 Section 124. Section **62A-5-309** is amended to read:

7102 **62A-5-309. Commitment -- Person 18 years or older.**

7103 Beginning July 1, 1993, the director or his designee may commit to the division an
7104 individual 18 years of age or older who has [~~mental retardation~~] an intellectual disability, for
7105 observation, diagnosis, care, and treatment if that commitment is based on:

7106 (1) involuntary commitment under the provisions of Section 62A-5-312; or

7107 (2) temporary emergency commitment under the provisions of Section 62A-5-311.

7108 Section 125. Section **62A-5-310** is amended to read:

7109 **62A-5-310. Involuntary commitment.**

7110 An individual may not be involuntarily committed to [~~a mental retardation facility~~] an
7111 intermediate care facility for people with an intellectual disability except in accordance with
7112 Sections 62A-5-311 and 62A-5-312.

7113 Section 126. Section **62A-5-311** is amended to read:

7114 **62A-5-311. Temporary emergency commitment -- Observation and evaluation.**

7115 (1) The director of the division or his designee may temporarily commit an individual
7116 to the division and therefore, as a matter of course, to [~~a mental retardation facility~~] an
7117 intermediate care facility for people with an intellectual disability for observation and
7118 evaluation upon:

7119 (a) written application by a responsible person who has reason to know that the
7120 individual is in need of commitment, stating:

7121 (i) a belief that the individual has [~~mental retardation~~] an intellectual disability and is
7122 likely to cause serious injury to self or others if not immediately committed;

7123 (ii) personal knowledge of the individual's condition; and

7124 (iii) the circumstances supporting that belief; or

7125 (b) certification by a licensed physician or designated [~~mental retardation~~] intellectual
7126 disability professional stating that the physician or designated [~~mental retardation~~] intellectual
7127 disability professional:

7128 (i) has examined the individual within a three-day period immediately preceding the
7129 certification; and

7130 (ii) is of the opinion that the individual has [~~mental retardation~~] an intellectual
7131 disability, and that because of the individual's [~~mental retardation~~] intellectual disability is
7132 likely to injure self or others if not immediately committed.

7133 (2) If the individual in need of commitment is not placed in the custody of the director
7134 or [~~his~~] the director's designee by the person submitting the application, the [~~director~~] director's
7135 or [~~his~~] the director's designee may certify, either in writing or orally that the individual is in
7136 need of immediate commitment to prevent injury to self or others.

7137 (3) Upon receipt of the application required by Subsection (1)(a) and the certifications
7138 required by [~~Subsection~~] Subsections (1)(b) and [~~Subsection~~] (2), a peace officer may take the
7139 individual named in the application and certificates into custody, and may transport the
7140 individual to a designated [~~mental retardation facility~~] intermediate care facility for people with
7141 an intellectual disability.

7142 (4) (a) An individual committed under this section may be held for a maximum of 24
7143 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the
7144 individual shall be released unless proceedings for involuntary commitment have been
7145 commenced under Section 62A-5-312.

7146 (b) After proceedings for involuntary commitment have been commenced the
7147 individual shall be released unless an order of detention is issued in accordance with Section
7148 62A-5-312.

7149 (5) If an individual is committed to the division under this section on the application of
7150 any person other than the individual's legal guardian, spouse, parent, or next of kin, the director
7151 or his designee shall immediately give notice of the commitment to the individual's legal
7152 guardian, spouse, parent, or next of kin, if known.

7153 Section 127. Section **62A-5-312** is amended to read:

7154 **62A-5-312. Involuntary commitment -- Procedures -- Necessary findings**
7155 **-- Periodic review.**

7156 (1) Any responsible person who has reason to know that an individual is in need of
7157 commitment, who has a belief that the individual has [~~mental retardation~~] an intellectual
7158 disability, and who has personal knowledge of the conditions and circumstances supporting
7159 that belief, may commence proceedings for involuntary commitment by filing a written petition
7160 with the district court, or if the subject of the petition is less than 18 years of age with the
7161 juvenile court, of the county in which the individual to be committed is physically located at
7162 the time the petition is filed. The application shall be accompanied by:

7163 (a) a certificate of a licensed physician or a designated [~~mental retardation~~] intellectual
7164 disability professional, stating that within a seven-day period immediately preceding the
7165 certification, the physician or designated [~~mental retardation~~] intellectual disability professional
7166 examined the individual and believes that the individual [~~is mentally retarded~~] has an
7167 intellectual disability and is in need of involuntary commitment; or

7168 (b) a written statement by the petitioner [~~stating~~] that:

7169 (i) states that the individual was requested to, but refused to, submit to an examination
7170 for [~~mental retardation~~] an intellectual disability by a licensed physician or designated [~~mental~~
7171 ~~retardation~~] intellectual disability professional, and that the individual refuses to voluntarily go
7172 to the division or [~~a mental retardation facility~~] an intermediate care facility for people with an
7173 intellectual disability recommended by the division for treatment[~~. That statement shall be~~];

7174 (ii) is under oath; and [~~set~~]

7175 (iii) sets forth the facts on which [~~it~~] the statement is based.

7176 (2) Before issuing a detention order, the court may require the petitioner to consult
7177 with personnel at the division or at [~~a mental retardation facility~~] an intermediate care facility
7178 for people with an intellectual disability and may direct a designated [~~mental retardation~~]
7179 intellectual disability professional to interview the petitioner and the individual to be
7180 committed, to determine the existing facts, and to report them to the court.

7181 (3) The court may issue a detention order and may direct a peace officer to immediately
7182 take the individual to [~~a mental retardation facility~~] an intermediate care facility for people with
7183 an intellectual disability to be detained for purposes of an examination if the court finds from
7184 the petition, from other statements under oath, or from reports of physicians or designated
7185 [~~mental retardation~~] intellectual disability professionals that there is a reasonable basis to
7186 believe that the individual to be committed:

- 7187 (a) poses an immediate danger of physical injury to self or others;
- 7188 (b) requires involuntary commitment pending examination and hearing;
- 7189 (c) the individual was requested but refused to submit to an examination by a licensed
7190 physician or designated [~~mental retardation~~] intellectual disability professional; or
- 7191 (d) the individual refused to voluntarily go to the division or to [~~a mental retardation~~
7192 facility] an intermediate care facility for people with an intellectual disability recommended by
7193 the division.
- 7194 (4) (a) If the court issues a detention order based on an application that did not include
7195 a certification by a designated [~~mental retardation~~] intellectual disability professional or
7196 physician in accordance with Subsection (1)(a), the director or his designee shall within 24
7197 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays,
7198 examine the individual, report the results of the examination to the court and inform the court:
- 7199 (i) whether the director or his designee believes that the individual [~~is mentally~~
7200 retarded] has an intellectual disability; and
- 7201 (ii) whether appropriate treatment programs are available and will be used by the
7202 individual without court proceedings.
- 7203 (b) If the report of the director or his designee is based on an oral report of the
7204 examiner, the examiner shall immediately send the results of the examination in writing to the
7205 clerk of the court.
- 7206 (5) Immediately after an individual is involuntarily committed under a detention order
7207 or under Section 62A-5-311, the director or his designee shall inform the individual, orally and
7208 in writing, of his right to communicate with an attorney. If an individual desires to
7209 communicate with an attorney, the director or his designee shall take immediate steps to assist
7210 the individual in contacting and communicating with an attorney.
- 7211 (6) (a) Immediately after commencement of proceedings for involuntary commitment,
7212 the court shall give notice of commencement of the proceedings to:
- 7213 (i) the individual to be committed;
- 7214 (ii) the applicant;
- 7215 (iii) any legal guardian of the individual;
- 7216 (iv) adult members of the individual's immediate family;
- 7217 (v) legal counsel of the individual to be committed, if any;

7218 (vi) the division; and
7219 (vii) any other person to whom the individual requests, or the court designates, notice
7220 to be given.

7221 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
7222 the extent of notice shall be determined by the court.

7223 (7) That notice shall:

7224 (a) set forth the allegations of the petition and all supporting facts;

7225 (b) be accompanied by a copy of any detention order issued under Subsection (3); and

7226 (c) state that a hearing will be held within the time provided by law, and give the time
7227 and place for that hearing.

7228 (8) The court may transfer the case and the custody of the individual to be committed
7229 to any other district court within the state, if:

7230 (a) there are no appropriate facilities for persons with ~~[mental retardation]~~ an
7231 intellectual disability within the judicial district; and

7232 (b) the transfer will not be adverse to the interests of the individual.

7233 (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any
7234 order or commitment under a detention order, the court shall appoint two designated ~~[mental~~
7235 ~~retardation]~~ intellectual disability professionals to examine the individual. If requested by the
7236 individual's counsel, the court shall appoint a reasonably available, qualified person designated
7237 by counsel to be one of the examining designated ~~[mental retardation]~~ intellectual disability
7238 professionals. The examinations shall be conducted:

7239 (i) separately;

7240 (ii) at the home of the individual to be committed, a hospital, ~~[a facility for person's~~
7241 ~~with mental retardation]~~ an intermediate care facility for people with an intellectual disability,
7242 or any other suitable place not likely to have a harmful effect on the individual; and

7243 (iii) within a reasonable period of time after appointment of the examiners by the court.

7244 (b) The court shall set a time for a hearing to be held within 10 court days of the
7245 appointment of the examiners. However, the court may immediately terminate the proceedings
7246 and dismiss the application if, prior to the hearing date, the examiners, the director, or his
7247 designee informs the court that:

7248 (i) the individual ~~[is not mentally retarded]~~ does not have an intellectual disability; or

7249 (ii) treatment programs are available and will be used by the individual without court
7250 proceedings.

7251 (10) (a) Each individual has the right to be represented by counsel at the commitment
7252 hearing and in all preliminary proceedings. If neither the individual nor others provide counsel,
7253 the court shall appoint counsel and allow sufficient time for counsel to consult with the
7254 individual prior to any hearing.

7255 (b) If the individual is indigent, the county in which the individual was physically
7256 located when taken into custody shall pay reasonable [~~attorneys'~~] attorney fees as determined
7257 by the court.

7258 (11) The division or a designated [~~mental-retardation~~] intellectual disability
7259 professional in charge of the individual's care shall provide all documented information on the
7260 individual to be committed and to the court at the time of the hearing. The individual's attorney
7261 shall have access to all documented information on the individual at the time of and prior to the
7262 hearing.

7263 (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all
7264 other persons to whom notice is required to be given to appear at the hearing, to testify, and to
7265 present and cross-examine witnesses.

7266 (b) The court may, in its discretion:

7267 (i) receive the testimony of any other person;

7268 (ii) allow a waiver of the right to appear only for good cause shown;

7269 (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

7270 (iv) upon motion of counsel, require the testimony of each examiner to be given out of
7271 the presence of any other examiner.

7272 (c) The hearing shall be conducted in as informal a manner as may be consistent with
7273 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
7274 individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court
7275 record. A verbatim record of the proceedings shall be maintained.

7276 (13) The court may order commitment if, upon completion of the hearing and
7277 consideration of the record, it finds by clear and convincing evidence that all of the following
7278 conditions are met:

7279 (a) the individual to be committed [~~is mentally-retarded~~] has an intellectual disability;

7280 (b) because of the individual's [~~mental retardation~~] intellectual disability one or more
7281 of the following conditions exist:

7282 (i) the individual poses an immediate danger of physical injury to self or others;

7283 (ii) the individual lacks the capacity to provide the basic necessities of life, such as
7284 food, clothing, or shelter; or

7285 (iii) the individual is in immediate need of habilitation, rehabilitation, care, or
7286 treatment to minimize the effects of the condition which poses a threat of serious physical or
7287 psychological injury to the individual, and the individual lacks the capacity to engage in a
7288 rational decision-making process concerning the need for habilitation, rehabilitation, care, or
7289 treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or
7290 treatment and the alternatives to it;

7291 (c) there is no appropriate, less restrictive alternative reasonably available; and

7292 (d) the division or the [~~mental retardation facility~~] intermediate care facility for people
7293 with an intellectual disability recommended by the division in which the individual is to be
7294 committed can provide the individual with treatment, care, habilitation, or rehabilitation that is
7295 adequate and appropriate to the individual's condition and needs.

7296 (14) In the absence of any of the required findings by the court, described in Subsection
7297 (13), the court shall dismiss the proceedings.

7298 (15) (a) The order of commitment shall designate the period for which the individual
7299 will be committed. An initial commitment may not exceed six months. Before the end of the
7300 initial commitment period, the administrator of the [~~facility for persons with mental~~
7301 ~~retardation~~] intermediate care facility for people with an intellectual disability shall commence
7302 a review hearing on behalf of the individual.

7303 (b) At the conclusion of the review hearing, the court may issue an order of
7304 commitment for up to a one-year period.

7305 (16) An individual committed under this part has the right to a rehearing, upon filing a
7306 petition with the court within 30 days after entry of the court's order. If the petition for
7307 rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial
7308 licensed physician and two impartial designated [~~mental retardation~~] intellectual disability
7309 professionals who have not previously been involved in the case to examine the individual. The
7310 rehearing shall, in all other respects, be conducted in accordance with this part.

7311 (17) (a) The court shall maintain a current list of all individuals under its orders of
7312 commitment. That list shall be reviewed in order to determine those patients who have been
7313 under an order of commitment for the designated period.

7314 (b) At least two weeks prior to the expiration of the designated period of any
7315 commitment order still in effect, the court that entered the original order shall inform the
7316 director of the division of the impending expiration of the designated commitment period.

7317 (c) The staff of the division shall immediately:

7318 (i) reexamine the reasons upon which the order of commitment was based and report
7319 the results of the examination to the court;

7320 (ii) discharge the resident from involuntary commitment if the conditions justifying
7321 commitment no longer exist; and

7322 (iii) immediately inform the court of any discharge.

7323 (d) If the director of the division reports to the court that the conditions justifying
7324 commitment no longer exist, and the administrator of the [~~mental retardation facility~~]
7325 intermediate care facility for people with an intellectual disability does not discharge the
7326 individual at the end of the designated period, the court shall order the immediate discharge of
7327 the individual, unless involuntary commitment proceedings are again commenced in
7328 accordance with this section.

7329 (e) If the director of the division, or [~~his~~] the director's designee reports to the court that
7330 the conditions designated in Subsection (13) still exist, the court may extend the commitment
7331 order for up to one year. At the end of any extension, the individual must be reexamined in
7332 accordance with this section, or discharged.

7333 (18) When a resident is discharged under this subsection, the division shall provide any
7334 further support services available and required to meet the resident's needs.

7335 Section 128. Section **62A-5-313** is amended to read:

7336 **62A-5-313. Transfer -- Procedures.**

7337 (1) The director of the division, or the director's designee, may place an involuntarily
7338 committed resident in appropriate care or treatment outside the [~~mental retardation facility~~]
7339 intermediate care facility for people with an intellectual disability. During that placement, the
7340 order of commitment shall remain in effect, until the resident is discharged or the order is
7341 terminated.

7342 (2) If the resident, or the resident's parent or guardian, objects to a proposed placement
7343 under this section, the resident may appeal the decision to the executive director or the
7344 executive director's designee. Those appeals shall be conducted in accordance with the
7345 procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an
7346 objection is made, the proposed placement may not take effect until the committee holds that
7347 hearing and the executive director makes a final decision on the placement.

7348 Section 129. Section **62A-5-316** is amended to read:

7349 **62A-5-316. Temporary detention.**

7350 Pending removal to [~~a mental retardation facility~~] an intermediate care facility for
7351 people with an intellectual disability, an individual taken into custody or ordered to be
7352 committed under this part may be detained in [~~his or her~~] the individual's home, or in some
7353 other suitable facility. The individual shall not, however, be detained in a nonmedical facility
7354 used for detention of individuals charged with or convicted of penal offenses, except in a
7355 situation of extreme emergency. The division shall take reasonable measures, as may be
7356 necessary, to assure proper care of an individual temporarily detained under this part.

7357 Section 130. Section **62A-5-317** is amended to read:

7358 **62A-5-317. Authority to transfer resident.**

7359 (1) The administrator of [~~a mental retardation facility, or his~~] an intermediate care
7360 facility for people with an intellectual disability, or the administrator's designee, may transfer or
7361 authorize the transfer of a resident to another [~~mental retardation facility~~] intermediate care
7362 facility for people with an intellectual disability if, before the transfer, the administrator
7363 conducts a careful evaluation of the resident and [~~his~~] the resident's treatment needs, and
7364 determines that a transfer would be in the best interest of that resident. If a resident is
7365 transferred, the administrator shall give immediate notice of the transfer to the resident's
7366 spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's
7367 nearest known relative.

7368 (2) If a resident, or [~~his~~] the resident's parent or guardian, objects to a proposed transfer
7369 under this section, the administrator shall conduct a hearing on the objection before a
7370 committee composed of persons selected by the administrator. That committee shall hear all
7371 evidence and make a recommendation to the administrator concerning the proposed transfer.
7372 The transfer may not take effect until the committee holds that hearing and the administrator

7373 renders a final decision on the proposed transfer.

7374 Section 131. Section **62A-5-318** is amended to read:

7375 **62A-5-318. Involuntary treatment with medication -- Committee -- Findings.**

7376 (1) If, after commitment, a resident elects to refuse treatment with medication, the
7377 director, the administrator of the [~~facility for persons with mental retardation~~] intermediate care
7378 facility for people with an intellectual disability, or a designee, shall submit documentation
7379 regarding the resident's proposed treatment to a committee composed of:

7380 (a) a licensed physician experienced in treating persons with [~~mental retardation and~~
7381 ~~related disabilities~~] an intellectual disability, who is not directly involved in the resident's
7382 treatment or diagnosis, and who is not biased toward any one facility;

7383 (b) a psychologist who is a designated [~~mental retardation~~] intellectual disability
7384 professional who is not directly involved in the resident's treatment or diagnosis; and

7385 (c) another designated [~~mental retardation~~] intellectual disability professional of the
7386 facility for persons with [~~mental retardation~~] an intellectual disability, or a designee.

7387 (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident
7388 lacks the ability to engage in a rational decision-making process regarding the need for
7389 habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh
7390 the possible costs and benefits of treatment, the committee may authorize involuntary treatment
7391 with medication if it determines that:

7392 (a) the proposed treatment is in the medical best interest of the resident, taking into
7393 account the possible side effects as well as the potential benefits of the medication; and

7394 (b) the proposed treatment is in accordance with prevailing standards of accepted
7395 medical practice.

7396 (3) In making the determination described in Subsection (2), the committee shall
7397 consider the resident's general history and present condition, the specific need for medication
7398 and its possible side effects, and any previous reaction to the same or comparable medication.

7399 (4) Any authorization of involuntary treatment under this section shall be periodically
7400 reviewed in accordance with rules promulgated by the division.

7401 Section 132. Section **62A-6-101** is amended to read:

7402 **CHAPTER 6. STERILIZATION OF A PERSON WITH A DISABILITY**

7403 **62A-6-101. Definitions.**

7404 As used in this chapter:

7405 (1) "Informed consent" means consent that is voluntary and based on an understanding
7406 by the person to be sterilized of the nature and consequences of sterilization, the reasonably
7407 foreseeable risks and benefits of sterilization, and the available alternative methods of
7408 contraception.

7409 (2) "Institutionalized" means residing in the Utah State Developmental Center, the
7410 Utah State Hospital, a residential facility for persons with a disability as defined in Sections
7411 10-9a-103 and 17-27a-103, a group home for ~~[disabled]~~ persons with a disability, a nursing
7412 home, or a foster care home or facility.

7413 (3) "Sterilization" means any medical procedure, treatment, or operation rendering an
7414 individual permanently incapable of procreation.

7415 Section 133. Section **62A-11-111** is amended to read:

7416 **62A-11-111. Lien provisions.**

7417 Provisions for collection of any lien placed as a condition of eligibility for any federally
7418 or state-funded public assistance program are as follows:

7419 (1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who
7420 was not eligible for old-age assistance but who participated in the assistance granted to the
7421 family is recoverable in the same manner as old-age assistance granted to the old-age recipient.

7422 (2) At the time of the settlement of a lien given as a condition of eligibility for the
7423 old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any
7424 additional money invested by the department in the home of an old-age recipient or recipients
7425 of other assistance programs either as payment of taxes, home and lot improvements, or to
7426 protect the interest of the state in the property for necessary improvements to make the home
7427 habitable, to be deducted from the market or appraised value of the real property. When it is
7428 necessary to sell property or to settle an estate the department may grant reasonable costs of
7429 sale and settlement of an estate as follows:

7430 (a) When the total cost of probate, including the sale of property when it is sold, and
7431 the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the
7432 total exemption, which shall be the only amount deductible from the market or appraised value
7433 of the property.

7434 (b) ~~[When]~~ Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the

7435 costs of probate, the following expenditures are authorized:

7436 (i) cost of funeral expenses not exceeding \$1,500;

7437 (ii) costs of terminal illness, provided the medical expenses have not been paid from
7438 any state or federally-funded assistance program;

7439 (iii) realty fees, if any;

7440 (iv) costs of revenue stamps, if any;

7441 (v) costs of abstract or title insurance, whichever is the least costly;

7442 (vi) ~~attorney's~~ attorney fees not exceeding the recommended fee established by the

7443 Utah State Bar[. ~~When an attorney sells the property in an estate he is probating, he is entitled~~
7444 ~~only to either a real estate fee or an attorney's fee, whichever is the lesser amount~~];

7445 (vii) administrator's fee not to exceed \$150;

7446 (viii) court costs; and

7447 (ix) delinquent taxes, if any.

7448 (c) An attorney, who sells the property in an estate that the attorney is probating, is
7449 entitled to the lesser of:

7450 (i) a real estate fee; or

7451 (ii) an attorney fee.

7452 (3) The amounts listed in Subsection (2)(b) are to be considered only when the total
7453 costs of probate exceed \$1,000, and those amounts are to be deducted from the market or
7454 appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the
7455 \$1,000 exemption.

7456 (4) When both husband and wife are recipients and one or both of them own an interest
7457 in real property, the lien attaches to the interests of both for the reimbursement of assistance
7458 received by either or both spouses. Only one exemption, as provided in this section, is
7459 allowed.

7460 (5) When a lien was executed by one party on property that is owned in joint tenancy
7461 with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy
7462 in common results, insofar as a department lien is affected, unless the recipients are husband
7463 and wife. When recipients are husband and wife who own property in joint tenancy with full
7464 rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a
7465 department lien might be affected, and settlement of the lien shall be in accordance with the

7466 provisions of Subsection (4).

7467 (6) The amount of the lien given for old-age assistance shall be the total amount of
7468 assistance granted up to the market or appraised value of the real or personal property, less the
7469 amount of the legal maximum property limitations from the execution of the lien until
7470 settlement thereof. There shall be no exemption of any kind or nature allowed against real or
7471 personal property liens granted for old-age assistance except assistance in the form of medical
7472 care, and nursing home care, other types of congregate care, and similar plans for [~~physically~~
7473 ~~and mentally ill~~] persons with a physical or mental disability.

7474 (7) When it is necessary to sell property or to settle an estate, the department is
7475 authorized to approve payment of the reasonable costs of sale and settlement of an estate on
7476 which a lien has been given for old-age assistance.

7477 (8) The amount of reimbursement of all liens held by the department shall be
7478 determined on the basis of the formulas described in this section, when they become due and
7479 payable.

7480 (9) All lien agreements shall be recorded with the county recorder of the county in
7481 which the real property is located, and that recording has the same effect as a judgment lien on
7482 any real property in which the recipient has any title or interest. All such real property
7483 including but not limited to, joint tenancy interests, shall, from the time a lien agreement is
7484 recorded, be and become charged with a lien for all assistance received by the recipient or his
7485 spouse as provided in this section. That lien has priority over all unrecorded encumbrances.
7486 No fees or costs shall be paid for such recording.

7487 (10) Liens shall become due and payable, and the department shall seek collection of
7488 each lien now held:

7489 (a) when the property to which the lien attaches is transferred to a third party prior to
7490 the recipient's death, provided, that if other property is purchased by the recipient to be used by
7491 [~~him~~] the recipient as a home, the department may transfer the amount of the lien from the
7492 property sold to the property purchased;

7493 (b) upon the death of the recipient and [~~his~~] the recipient's spouse, if any. When the
7494 heirs or devisees of the property are also recipients of public assistance, or when other hardship
7495 circumstances exist, the department may postpone settlement of the lien if that would be in the
7496 best interest of the recipient and the state;

7497 (c) when a recipient voluntarily offers to settle the lien; or

7498 (d) when property subject to a lien is no longer used by a recipient and appears to be
7499 abandoned.

7500 (11) When a lien becomes due and payable, a certificate in a form approved by the
7501 department certifying to the amount of assistance provided to the recipient and the amount of
7502 the lien, shall be mailed to the recipient, [~~his~~] the recipient's heirs, or administrators of the
7503 estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as
7504 provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The
7505 amount so certified constitutes the entire claim, as of the date of the certificate, against the real
7506 or personal property of the recipient[;] or [~~his~~] the recipient's spouse. Any person dealing with
7507 the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount
7508 of the existing lien against that real or personal property. That amount, however, shall increase
7509 by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six
7510 months after the lien becomes due and payable, or at the termination of probate proceedings,
7511 whichever occurs later.

7512 (12) If heirs are unable to make a lump-sum settlement of the lien at the time it
7513 becomes due and payable, the department may permit settlement based upon periodic
7514 repayments in a manner prescribed by the department, with interest as provided in Subsection
7515 (11).

7516 (13) All sums so recovered, except those credited to the federal government, shall be
7517 retained by the department.

7518 (14) The department is empowered to accept voluntary conveyance of real or personal
7519 property in satisfaction of its interest therein. All property acquired by the department under
7520 the provisions of this section may be disposed of by public or private sale under rules
7521 prescribed by the department. The department is authorized to execute and deliver any
7522 document necessary to convey title to all property that comes into its possession, as though the
7523 department constituted a corporate entity.

7524 (15) Any real property acquired by the department, either by foreclosure or voluntary
7525 conveyance, is tax exempt, so long as it is so held.

7526 Section 134. Section **62A-15-605** is amended to read:

7527 **62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and**

7528 **purpose.**

7529 (1) There is established the Forensic Mental Health Coordinating Council composed of
7530 the following members:

7531 (a) the director or the director's appointee;

7532 (b) the superintendent of the state hospital or the superintendent's appointee;

7533 (c) the executive director of the Department of Corrections or the executive director's
7534 appointee;

7535 (d) a member of the Board of Pardons and Parole or its appointee;

7536 (e) the attorney general or the attorney general's appointee;

7537 (f) the director of the Division of Services for People with Disabilities or the director's
7538 appointee;

7539 (g) the director of the Division of Juvenile Justice Services or the director's appointee;

7540 (h) the director of the Commission on Criminal and Juvenile Justice or the director's
7541 appointee;

7542 (i) the state court administrator or the administrator's appointee;

7543 (j) the state juvenile court administrator or the administrator's appointee;

7544 (k) a representative from a local mental health authority or an organization, excluding
7545 the state hospital that provides mental health services under contract with the Division of
7546 Substance Abuse and Mental Health or a local mental health authority, as appointed by the
7547 director of the division;

7548 (l) the executive director of the Governor's Council for People with Disabilities or the
7549 director's appointee; and

7550 (m) other persons as appointed by the members described in Subsections (1)(a) through
7551 (l).

7552 (2) A member may not receive compensation or benefits for the member's service, but
7553 may receive per diem and travel expenses in accordance with:

7554 (a) Section 63A-3-106;

7555 (b) Section 63A-3-107; and

7556 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
7557 63A-3-107.

7558 (3) The purpose of the Forensic Mental Health Coordinating Council is to:

- 7559 (a) advise the director regarding admissions to the state hospital of persons in the
7560 custody of the Department of Corrections;
- 7561 (b) develop policies for coordination between the division and the Department of
7562 Corrections;
- 7563 (c) advise the executive director of the Department of Corrections regarding issues of
7564 care for persons in the custody of the Department of Corrections who are mentally ill;
- 7565 (d) promote communication between and coordination among all agencies dealing with
7566 persons with [~~mental retardation, as defined in Section 62A-5-101,~~] an intellectual disability or
7567 mental illness who become involved in the civil commitment system or in the criminal or
7568 juvenile justice system;
- 7569 (e) study, evaluate, and recommend changes to laws and procedures relating to persons
7570 with [~~mental retardation~~] an intellectual disability or mental illness who become involved in
7571 the civil commitment system or in the criminal or juvenile justice system;
- 7572 (f) identify and promote the implementation of specific policies and programs to deal
7573 fairly and efficiently with persons with [~~mental retardation~~] an intellectual disability or mental
7574 illness who become involved in the civil commitment system or in the criminal or juvenile
7575 justice system; and
- 7576 (g) promote judicial education relating to persons with [~~mental retardation~~] an
7577 intellectual disability or mental illness who become involved in the civil commitment system
7578 or in the criminal or juvenile justice system.

7579 Section 135. Section **62A-15-608** is amended to read:

7580 **62A-15-608. Local mental health authority -- Supervision and treatment of**
7581 **persons with a mental illness.**

7582 (1) Each local mental health authority has responsibility for supervision and treatment
7583 of [~~mentally ill~~] persons with a mental illness who have been committed to its custody under
7584 the provisions of this part, whether residing in the state hospital or elsewhere.

7585 (2) The division, in administering and supervising the security responsibilities of the
7586 state hospital under its authority provided by Section 62A-15-603, shall enforce Sections
7587 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

7588 Section 136. Section **62A-15-610** is amended to read:

7589 **62A-15-610. Objectives of state hospital and other facilities -- Persons who may**

7590 **be admitted to state hospital.**

7591 (1) The objectives of the state hospital and other mental health facilities shall be to care
7592 for all persons within this state who are subject to the provisions of this chapter; and to furnish
7593 them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement,
7594 occupation, and support that is conducive to their physical and mental well-being.

7595 (2) Only the following persons may be admitted to the state hospital:

7596 (a) persons 18 years of age and older who meet the criteria necessary for commitment
7597 under this part and who have severe mental disorders for whom no appropriate, less restrictive
7598 treatment alternative is available;

7599 (b) persons under 18 years of age who meet the criteria necessary for commitment
7600 under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
7601 Mental Health, and for whom no less restrictive alternative is available;

7602 (c) persons adjudicated and found to be guilty [~~and mentally ill~~] with a mental illness
7603 under Title 77, Chapter 16a, Commitment and Treatment of [~~Mentally Ill~~] Persons with a
7604 Mental Illness;

7605 (d) persons adjudicated and found to be not guilty by reason of insanity who are under
7606 a subsequent commitment order because they [~~are mentally ill~~] have a mental illness and are a
7607 danger to themselves or others, under Section 77-16a-302;

7608 (e) persons found incompetent to proceed under Section 77-15-6;

7609 (f) persons who require an examination under Title 77, Utah Code of Criminal
7610 Procedure; and

7611 (g) persons in the custody of the Department of Corrections, admitted in accordance
7612 with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

7613 Section 137. Section **62A-15-616** is amended to read:

7614 **62A-15-616. Persons entering state mentally ill.**

7615 (1) A person who enters this state while mentally ill may be returned by a local mental
7616 health authority to the home of relatives or friends of that [~~mentally ill~~] person with a mental
7617 illness, if known, or to a hospital in the state where that [~~mentally ill~~] person with a mental
7618 illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on
7619 Mental Health.

7620 (2) This section does not prevent commitment of persons who are traveling through or

7621 temporarily residing in this state.

7622 Section 138. Section **62A-15-619** is amended to read:

7623 **62A-15-619. Liability of estate of person with a mental illness.**

7624 The provisions made in this part for the support of [~~mentally ill~~] persons with a mental
7625 illness at public expense do not release the estates of those persons from liability for their care
7626 and treatment, and the division is authorized and empowered to collect from the estates of
7627 those persons any sums paid by the state in their behalf.

7628 Section 139. Section **62A-15-629** is amended to read:

7629 **62A-15-629. Temporary commitment -- Requirements and procedures.**

7630 (1) (a) An adult may be temporarily, involuntarily committed to a local mental health
7631 authority upon:

7632 (i) written application by a responsible person who has reason to know, stating a belief
7633 that the individual is likely to cause serious injury to [~~himself~~] self or others if not immediately
7634 restrained, and stating the personal knowledge of the individual's condition or circumstances
7635 which lead to that belief; and

7636 (ii) a certification by a licensed physician or designated examiner stating that the
7637 physician or designated examiner has examined the individual within a three-day period
7638 immediately preceding that certification, and that [~~he~~] the physician or designated examiner is
7639 of the opinion that the individual [~~is mentally ill~~] has a mental illness and, because of [~~his~~] the
7640 individual's mental illness, is likely to injure [~~himself~~] self or others if not immediately
7641 restrained.

7642 (b) Application and certification as described in Subsection (1)(a) authorizes any peace
7643 officer to take the individual into the custody of a local mental health authority and transport
7644 the individual to that authority's designated facility.

7645 (2) If a duly authorized peace officer observes a person involved in conduct that gives
7646 the officer probable cause to believe that the person [~~is mentally ill~~] has a mental illness, as
7647 defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there
7648 is a substantial likelihood of serious harm to that person or others, pending proceedings for
7649 examination and certification under this part, the officer may take that person into protective
7650 custody. The peace officer shall transport the person to be transported to the designated facility
7651 of the appropriate local mental health authority pursuant to this section, either on the basis of

7652 [his] the peace officer's own observation or on the basis of a mental health officer's observation
7653 that has been reported to [him] the peace officer by that mental health officer. Immediately
7654 thereafter, the officer shall place the person in the custody of the local mental health authority
7655 and make application for commitment of that person to the local mental health authority. The
7656 application shall be on a prescribed form and shall include the following:

7657 (a) a statement by the officer that [he] the officer believes, on the basis of personal
7658 observation or on the basis of a mental health officer's observation reported to [him] the officer
7659 by the mental health officer, that the person is, as a result of a mental illness, a substantial and
7660 immediate danger to [himself] self or others;

7661 (b) the specific nature of the danger;

7662 (c) a summary of the observations upon which the statement of danger is based; and

7663 (d) a statement of facts which called the person to the attention of the officer.

7664 (3) A person committed under this section may be held for a maximum of 24 hours,
7665 excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the
7666 person shall be released unless application for involuntary commitment has been commenced
7667 pursuant to Section 62A-15-631. If that application has been made, an order of detention may
7668 be entered under Subsection 62A-15-631(3). If no order of detention is issued, the patient shall
7669 be released unless he has made voluntary application for admission.

7670 (4) Transportation of [~~mentally ill~~] persons with a mental illness pursuant to
7671 Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law
7672 enforcement authority or, under the appropriate law enforcement's authority, by ambulance to
7673 the extent that Subsection (5) applies. However, if the designated facility is outside of that
7674 authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the
7675 person to be transported by ambulance to the extent that Subsection (5) applies.

7676 (5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be
7677 transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In
7678 addition, if the person requires physical medical attention, the peace officer shall direct that
7679 transportation be to an appropriate medical facility for treatment.

7680 Section 140. Section **62A-15-631** is amended to read:

7681 **62A-15-631. Involuntary commitment under court order -- Examination --**
7682 **Hearing -- Power of court -- Findings required -- Costs.**

7683 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
7684 older may be commenced by filing a written application with the district court of the county in
7685 which the proposed patient resides or is found, by a responsible person who has reason to know
7686 of the condition or circumstances of the proposed patient which lead to the belief that the
7687 individual ~~[is mentally ill]~~ has a mental illness and should be involuntarily committed. That
7688 application shall be accompanied by:

7689 (a) a certificate of a licensed physician or a designated examiner stating that within a
7690 seven-day period immediately preceding the certification the physician or designated examiner
7691 has examined the individual, and that ~~[he]~~ the physician or designated examiner is of the
7692 opinion that the individual is mentally ill and should be involuntarily committed; or

7693 (b) a written statement by the applicant that:

7694 (i) the individual has been requested to, but has refused to, submit to an examination of
7695 mental condition by a licensed physician or designated examiner~~[- That application shall be];~~

7696 (ii) is sworn to under oath; and ~~[shall state]~~

7697 (iii) states the facts upon which the application is based.

7698 (2) ~~[Prior to]~~ Before issuing a judicial order, the court may require the applicant to
7699 consult with the appropriate local mental health authority, or may direct a mental health
7700 professional from that local mental health authority to interview the applicant and the proposed
7701 patient to determine the existing facts and report them to the court.

7702 (3) If the court finds from the application, from any other statements under oath, or
7703 from any reports from a mental health professional that there is a reasonable basis to believe
7704 that the proposed patient has a mental illness which poses a substantial danger, as defined in
7705 Section 62A-15-602, to ~~[himself]~~ self, others, or property requiring involuntary commitment
7706 pending examination and hearing; or, if the proposed patient has refused to submit to an
7707 interview with a mental health professional as directed by the court or to go to a treatment
7708 facility voluntarily, the court may issue an order, directed to a mental health officer or peace
7709 officer, to immediately place the proposed patient in the custody of a local mental health
7710 authority or in a temporary emergency facility as provided in Section 62A-15-634 to be
7711 detained for the purpose of examination. Within 24 hours of the issuance of the order for
7712 examination, a local mental health authority or its designee shall report to the court, orally or in
7713 writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient

7714 has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment
7715 programs are available and acceptable without court proceedings. Based on that information,
7716 the court may, without taking any further action, terminate the proceedings and dismiss the
7717 application. In any event, if the examiner reports orally, ~~he~~ the examiner shall immediately
7718 send the report in writing to the clerk of the court.

7719 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
7720 the allegations of the application and any reported facts, together with a copy of any official
7721 order of detention, shall be provided by the court to a proposed patient ~~[prior to]~~ before, or
7722 upon, placement in the custody of a local mental health authority or, with respect to any
7723 individual presently in the custody of a local mental health authority whose status is being
7724 changed from voluntary to involuntary, upon the filing of an application for that purpose with
7725 the court. A copy of that order of detention shall be maintained at the place of detention.

7726 (5) Notice of commencement of those proceedings shall be provided by the court as
7727 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
7728 legal counsel for the parties involved, and any other persons whom the proposed patient or the
7729 court shall designate. That notice shall advise those persons that a hearing may be held within
7730 the time provided by law. If the patient has refused to permit release of information necessary
7731 for provisions of notice under this subsection, the extent of notice shall be determined by the
7732 court.

7733 (6) Proceedings for commitment of an individual under the age of 18 years to the
7734 division may be commenced by filing a written application with the juvenile court in
7735 accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of
7736 Substance Abuse and Mental Health.

7737 (7) The district court may, in its discretion, transfer the case to any other district court
7738 within this state, provided that the transfer will not be adverse to the interest of the proposed
7739 patient.

7740 (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the
7741 issuance of a judicial order, or after commitment of a proposed patient to a local mental health
7742 authority under court order for detention or examination, the court shall appoint two designated
7743 examiners to examine the proposed patient. If requested by the proposed patient's counsel, the
7744 court shall appoint, as one of the examiners, a reasonably available qualified person designated

7745 by counsel. The examinations, to be conducted separately, shall be held at the home of the
7746 proposed patient, a hospital or other medical facility, or at any other suitable place that is not
7747 likely to have a harmful effect on the patient's health.

7748 (b) The examiner shall inform the patient if not represented by an attorney that, if
7749 desired, the patient does not have to say anything, the nature and reasons for the examination,
7750 that it was ordered by the court, that any information volunteered could form part of the basis
7751 for his or her involuntary commitment, and that findings resulting from the examination will be
7752 made available to the court.

7753 (c) A time shall be set for a hearing to be held within 10 calendar days of the
7754 appointment of the designated examiners, unless those examiners or a local mental health
7755 authority or its designee informs the court prior to that hearing date that the patient is not
7756 mentally ill, that ~~he~~ the patient has agreed to become a voluntary patient under Section
7757 62A-15-625, or that treatment programs are available and acceptable without court
7758 proceedings, in which event the court may, without taking any further action, terminate the
7759 proceedings and dismiss the application.

7760 (9) (a) ~~Prior to~~ Before the hearing, an opportunity to be represented by counsel shall
7761 be afforded to every proposed patient, and if neither the patient nor others provide counsel, the
7762 court shall appoint counsel and allow ~~him~~ counsel sufficient time to consult with the patient
7763 ~~prior to~~ before the hearing. In the case of an indigent patient, the payment of reasonable
7764 ~~attorneys'~~ attorney fees for counsel, as determined by the court, shall be made by the county
7765 in which the patient resides or was found.

7766 (b) The proposed patient, the applicant, and all other persons to whom notice is
7767 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to
7768 present and cross-examine witnesses. The court may, in its discretion, receive the testimony of
7769 any other person. The court may allow a waiver of the patient's right to appear only for good
7770 cause shown, and that cause shall be made a matter of court record.

7771 (c) The court is authorized to exclude all persons not necessary for the conduct of the
7772 proceedings and may, upon motion of counsel, require the testimony of each examiner to be
7773 given out of the presence of any other examiners.

7774 (d) The hearing shall be conducted in as informal a manner as may be consistent with
7775 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the

7776 mental health of the proposed patient.

7777 (e) The court shall consider all relevant historical and material information which is
7778 offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah
7779 Rules of Evidence.

7780 (f) (i) A local mental health authority or its designee, or the physician in charge of the
7781 patient's care shall, at the time of the hearing, provide the court with the following information:

7782 (A) the detention order;

7783 (B) admission notes;

7784 (C) the diagnosis;

7785 (D) any doctors' orders;

7786 (E) progress notes;

7787 (F) nursing notes; and

7788 (G) medication records pertaining to the current commitment.

7789 (ii) That information shall also be supplied to the patient's counsel at the time of the
7790 hearing, and at any time prior to the hearing upon request.

7791 (10) The court shall order commitment of an individual who is 18 years of age or older
7792 to a local mental health authority if, upon completion of the hearing and consideration of the
7793 information presented in accordance with Subsection (9)(e), the court finds by clear and
7794 convincing evidence that:

7795 (a) the proposed patient has a mental illness;

7796 (b) because of the proposed patient's mental illness [~~he~~] the proposed patient poses a
7797 substantial danger, as defined in Section 62A-15-602, of physical injury to [~~others or himself~~]
7798 self or others, which may include the inability to provide the basic necessities of life such as
7799 food, clothing, and shelter, if allowed to remain at liberty;

7800 (c) the patient lacks the ability to engage in a rational decision-making process
7801 regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh
7802 the possible risks of accepting or rejecting treatment;

7803 (d) there is no appropriate less-restrictive alternative to a court order of commitment;

7804 and

7805 (e) the local mental health authority can provide the individual with treatment that is
7806 adequate and appropriate to [~~his~~] the individual's conditions and needs. In the absence of the

7807 required findings of the court after the hearing, the court shall forthwith dismiss the
7808 proceedings.

7809 (11) (a) The order of commitment shall designate the period for which the individual
7810 shall be treated. When the individual is not under an order of commitment at the time of the
7811 hearing, that period may not exceed six months without benefit of a review hearing. Upon
7812 such a review hearing, to be commenced prior to the expiration of the previous order, an order
7813 for commitment may be for an indeterminate period, if the court finds by clear and convincing
7814 evidence that the required conditions in Subsection (10) will last for an indeterminate period.

7815 (b) The court shall maintain a current list of all patients under its order of commitment.
7816 That list shall be reviewed to determine those patients who have been under an order of
7817 commitment for the designated period. At least two weeks prior to the expiration of the
7818 designated period of any order of commitment still in effect, the court that entered the original
7819 order shall inform the appropriate local mental health authority or its designee. The local
7820 mental health authority or its designee shall immediately reexamine the reasons upon which the
7821 order of commitment was based. If the local mental health authority or its designee determines
7822 that the conditions justifying that commitment no longer exist, it shall discharge the patient
7823 from involuntary commitment and immediately report that to the court. Otherwise, the court
7824 shall immediately appoint two designated examiners and proceed under Subsections (8)
7825 through (10).

7826 (c) The local mental health authority or its designee responsible for the care of a patient
7827 under an order of commitment for an indeterminate period, shall at six-month intervals
7828 reexamine the reasons upon which the order of indeterminate commitment was based. If the
7829 local mental health authority or its designee determines that the conditions justifying that
7830 commitment no longer exist, that local mental health authority or its designee shall discharge
7831 the patient from its custody and immediately report the discharge to the court. If the local
7832 mental health authority or its designee determines that the conditions justifying that
7833 commitment continue to exist, the local mental health authority or its designee shall send a
7834 written report of those findings to the court. The patient and his counsel of record shall be
7835 notified in writing that the involuntary commitment will be continued, the reasons for that
7836 decision, and that the patient has the right to a review hearing by making a request to the court.
7837 Upon receiving the request, the court shall immediately appoint two designated examiners and

7838 proceed under Subsections (8) through (10).

7839 (12) In the event that the designated examiners are unable, because a proposed patient
7840 refuses to submit to an examination, to complete that examination on the first attempt, the
7841 court shall fix a reasonable compensation to be paid to those designated examiners for their
7842 services.

7843 (13) Any person committed as a result of an original hearing or a person's legally
7844 designated representative who is aggrieved by the findings, conclusions, and order of the court
7845 entered in the original hearing has the right to a new hearing upon a petition filed with the court
7846 within 30 days of the entry of the court order. The petition must allege error or mistake in the
7847 findings, in which case the court shall appoint three impartial designated examiners previously
7848 unrelated to the case to conduct an additional examination of the patient. The new hearing
7849 shall, in all other respects, be conducted in the manner otherwise permitted.

7850 (14) Costs of all proceedings under this section shall be paid by the county in which the
7851 proposed patient resides or is found.

7852 Section 141. Section **62A-15-632** is amended to read:

7853 **62A-15-632. Circumstances under which conditions justifying initial involuntary**
7854 **commitment shall be considered to continue to exist.**

7855 (1) After a person has been involuntarily committed to the custody of a local mental
7856 health authority under Subsection 62A-15-631(10), the conditions justifying commitment
7857 under that subsection shall be considered to continue to exist, for purposes of continued
7858 treatment under Subsection 62A-15-631(11) or conditional release under Section 62A-15-637,
7859 if the court finds that the patient is still mentally ill, and that absent an order of involuntary
7860 commitment and without continued treatment [~~he~~] the patient will suffer severe and abnormal
7861 mental and emotional distress as indicated by recent past history, and will experience
7862 deterioration in [~~his~~] the patient's ability to function in the least restrictive environment, thereby
7863 making [~~him~~] the patient a substantial danger to [~~himself~~] self or others.

7864 (2) A patient whose treatment is continued or who is conditionally released under the
7865 terms of this section, shall be maintained in the least restrictive environment available [~~which~~]
7866 that can provide [~~him~~] the patient with the treatment that is adequate and appropriate.

7867 Section 142. Section **62A-15-644** is amended to read:

7868 **62A-15-644. Additional powers of director -- Reports and records of division.**

7869 (1) In addition to specific authority granted by other provisions of this part, the director
7870 has authority to prescribe the form of applications, records, reports, and medical certificates
7871 provided for under this part, and the information required to be contained therein, and to adopt
7872 rules that are not inconsistent with the provisions of this part that ~~he~~ the director finds to be
7873 reasonably necessary for the proper and efficient commitment of ~~mentally ill~~ persons with a
7874 mental illness.

7875 (2) The division shall require reports relating to the admission, examination, diagnosis,
7876 release, or discharge of any patient and investigate complaints made by any patient or by any
7877 person on behalf of a patient.

7878 (3) A local mental health authority shall keep a record of the names and current status
7879 of all persons involuntarily committed to it under this chapter.

7880 Section 143. Section **62A-15-706** is amended to read:

7881 **62A-15-706. Parent advocate.**

7882 The division shall establish the position of a parent advocate to assist parents of
7883 ~~mentally ill~~ children with a mental illness who are subject to the procedures required by this
7884 part.

7885 Section 144. Section **62A-15-902** is amended to read:

7886 **62A-15-902. Design and operation -- Security.**

7887 (1) The forensic mental health facility is a secure treatment facility.

7888 (2) (a) The forensic mental health facility accommodates the following populations:

7889 (i) prison inmates displaying mental illness, as defined in Section 62A-15-602,
7890 necessitating treatment in a secure mental health facility;

7891 (ii) criminally adjudicated persons found guilty ~~and mentally ill~~ with a mental illness
7892 or guilty ~~and mentally ill~~ with a mental illness at the time of the offense undergoing
7893 evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of
7894 ~~Mentally Ill~~ Persons with a Mental Illness;

7895 (iii) criminally adjudicated persons undergoing evaluation for competency or found
7896 guilty ~~and mentally ill~~ with a mental illness or guilty ~~and mentally ill~~ with a mental illness
7897 at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of
7898 ~~Mentally Ill~~ Persons with a Mental Illness, who also have ~~mental retardation~~ an intellectual
7899 disability;

7900 (iv) persons undergoing evaluation for competency or found by a court to be
7901 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of
7902 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

7903 (v) persons who are civilly committed to the custody of a local mental health authority
7904 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health
7905 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack
7906 of necessary security, as determined by the superintendent or the superintendent's designee; and

7907 (vi) persons ordered to commit themselves to the custody of the Division of Substance
7908 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or
7909 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

7910 (b) Placement of an offender in the forensic mental health facility under any category
7911 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's
7912 status as established by the court at the time of adjudication.

7913 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7914 department shall make rules providing for the allocation of beds to the categories described in
7915 Subsection (2)(a).

7916 (3) The department shall:

7917 (a) own and operate the forensic mental health facility;

7918 (b) provide and supervise administrative and clinical staff; and

7919 (c) provide security staff who are trained as psychiatric technicians.

7920 (4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate
7921 individuals to perform security functions for the state hospital.

7922 Section 145. Section **63M-9-103** is amended to read:

7923 **63M-9-103. Definitions.**

7924 As used in this chapter:

7925 (1) "Children and youth at risk" means:

7926 (a) ~~[disabled]~~ persons, age 18 to 22, who have a disability; or

7927 (b) persons in the custody of the Division of Juvenile Justice Services within the
7928 Department of Human Services age 18 to 21; and

7929 (c) minors who may at times require appropriate and uniquely designed intervention to:

7930 (i) achieve literacy;

7931 (ii) advance through the schools;

7932 (iii) achieve commensurate with their ability; and

7933 (iv) participate in society in a meaningful way as competent, productive, caring, and
7934 responsible citizens.

7935 (2) "Council" means the Families, Agencies, and Communities Together State Council
7936 established under Section 63M-9-201.

7937 (3) "Local interagency council" means a council established under Section 63M-9-301.

7938 (4) "Steering committee" means the Families, Agencies, and Communities Together
7939 Steering Committee established under Section 63M-9-202.

7940 (5) (a) "Child and family centered service delivery system" means services provided to
7941 children and youth at risk and their families that may be delivered by teams and within a
7942 supportive community environment.

7943 (b) "Community" includes, when available, parents of children and youth at risk;
7944 directors of geographical service delivery areas designated by state agencies; local government
7945 elected officials; appointed county officials who are responsible for providing substance abuse,
7946 mental health, or public health services; educators; school districts; parent-teacher
7947 organizations; child and family advocacy groups; religious and community-based service
7948 organizations; individuals; and private sector entities who come together to develop, adopt, and
7949 administer a plan for a collaborative service delivery system for children and youth at risk.

7950 (c) "Community resources" means time, money, services, and other contributions
7951 provided by individuals, private sector entities, religious organizations, community-based
7952 service organizations, school districts, municipal governments, and county governments.

7953 (d) "Individualized and coordinated service plan" means a plan for services and
7954 supports that is comprehensive in its scope, is the product of a collaborative process between
7955 public and private service providers, and is specifically tailored to the unique needs of each
7956 child or youth served under this chapter.

7957 (e) "Performance monitoring system" means a process to regularly collect and analyze
7958 performance information including performance indicators and performance goals:

7959 (i) "performance indicators" means actual performance information regarding a
7960 program or activity; and

7961 (ii) "performance goals" means a target level of performance or an expected level of

7962 performance against which actual performance is measured.

7963 (f) "Plan for a collaborative service delivery system," "plan," or "plans" means a
7964 written document describing how a community proposes to deliver services and supports to
7965 children and youth at risk that effectively bring to bear all needed resources, including
7966 community resources, to enable them to achieve the outcomes described in Subsection (1)(c).

7967 Section 146. Section **64-9b-1** is amended to read:

7968 **64-9b-1. Legislative findings.**

7969 (1) The Legislature finds that it is in the best interest of the state [~~of Utah~~] for the
7970 department to:

7971 (a) develop job opportunities to further enhance the rehabilitation of inmates of the
7972 Utah state prison;

7973 (b) establish and actively work toward the goal that all inmates shall be productively
7974 involved in a treatment, education, or work program, or a combination of these programs, as
7975 appropriate, except for inmates who the department determines [~~are physically or mentally~~
7976 ~~disabled~~] have a physical or mental disability, or pose a danger to the public, so that they are
7977 unable to engage in these activities; and

7978 (c) submit a comprehensive management plan outlining the department's plan to meet
7979 this goal to the Legislature on or before November 1 of each even-numbered year, and the plan
7980 shall include:

7981 (i) a cost-effective analysis of current inmate education, treatment, and work programs;
7982 and

7983 (ii) a study of the feasibility of expanding inmate work programs, particularly in regard
7984 to programs that:

7985 (A) are not capital intensive;

7986 (B) do not unfairly compete with existing Utah industry; and

7987 (C) are designed to increase the motivation, develop the work capabilities, and foster
7988 the cooperation of inmates.

7989 (2) The Legislature further finds that a proper means to accomplish this is through a
7990 liberal application of this [~~act~~] chapter.

7991 Section 147. Section **67-19-27** is amended to read:

7992 **67-19-27. Leave of absence with pay for employees with a disability who are**

7993 **covered under other civil service systems.**

7994 (1) As used in this section:

7995 (a) (i) "Law enforcement officer" means a sworn and certified peace officer who is an
7996 employee of a law enforcement agency that is part of or administered by the state, and whose
7997 primary and principal duties consist of the prevention and detection of crime and the
7998 enforcement of criminal statutes of this state.

7999 (ii) "Law enforcement officer" specifically includes the following:

8000 (A) the commissioner of public safety and any member of the Department of Public
8001 Safety certified as a peace officer;

8002 (B) all persons specified in Sections 23-20-1.5 and 79-4-501;

8003 (C) investigators for the Motor Vehicle Enforcement Division;

8004 (D) special agents or investigators employed by the attorney general;

8005 (E) employees of the Department of Natural Resources designated as peace officers by
8006 law;

8007 (F) the executive director of the Department of Corrections and any correctional
8008 enforcement or investigative officer designated by the executive director and approved by the
8009 commissioner of public safety and certified by the division; and

8010 (G) correctional enforcement, investigative, or adult probation and parole officers
8011 employed by the Department of Corrections serving on or before July 1, 1993.

8012 (b) "State correctional officer" means a correctional officer as defined in Section
8013 53-13-104 who is employed by the Department of Corrections.

8014 (2) (a) Each law enforcement officer, state correctional officer, operator license
8015 examiner, commercial license examiner, or Driver License Division hearing examiner who is
8016 injured in the course of employment shall be given a leave of absence with full pay during the
8017 period the employee [~~is temporarily disabled~~] has a temporary disability.

8018 (b) This compensation is in lieu of all other compensation provided by law except
8019 hospital and medical services that are provided by law.

8020 (3) Each law enforcement officer or state correctional officer who [~~is 100% disabled~~]
8021 has a 100% disability through a criminal act upon [~~his~~] the law enforcement officer's person
8022 while in the lawful discharge of [~~his~~] the law enforcement officer's duties, shall be given a
8023 leave of absence with full compensation until [~~he~~] the law enforcement officer retires or

8024 reaches the retirement age of 62 years.

8025 Section 148. Section **68-3-12.5** is amended to read:

8026 **68-3-12.5. Definitions for Utah Code.**

8027 (1) The definitions listed in this section apply to the Utah Code, unless:

8028 (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant
8029 to the context of the statute; or

8030 (b) a different definition is expressly provided for the respective title, chapter, part,
8031 section, or subsection.

8032 (2) "Adjudicative proceeding" means:

8033 (a) an action by a board, commission, department, officer, or other administrative unit
8034 of the state that determines the legal rights, duties, privileges, immunities, or other legal
8035 interests of one or more identifiable persons, including an action to grant, deny, revoke,
8036 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

8037 (b) judicial review of an action described in Subsection (2)(a).

8038 (3) "Administrator" includes "executor" when the subject matter justifies the use.

8039 (4) "Advisory board," "advisory commission," and "advisory council" mean a board,
8040 commission, committee, or council that:

8041 (a) is created by, and whose duties are provided by, statute or executive order;

8042 (b) performs its duties only under the supervision of another person as provided by
8043 statute; and

8044 (c) provides advice and makes recommendations to another person that makes policy
8045 for the benefit of the general public.

8046 (5) "County executive" means:

8047 (a) the county commission, in the county commission or expanded county commission
8048 form of government established under Title 17, Chapter 52, Changing Forms of County
8049 Government;

8050 (b) the county executive, in the county executive-council optional form of government
8051 authorized by Section 17-52-504; or

8052 (c) the county manager, in the council-manager optional form of government
8053 authorized by Section 17-52-505.

8054 (6) "County legislative body" means:

8055 (a) the county commission, in the county commission or expanded county commission
8056 form of government established under Title 17, Chapter 52, Changing Forms of County
8057 Government;

8058 (b) the county council, in the county executive-council optional form of government
8059 authorized by Section 17-52-504; and

8060 (c) the county council, in the council-manager optional form of government authorized
8061 by Section 17-52-505.

8062 (7) "Depose" means to make a written statement made under oath or affirmation.

8063 (8) "Executor" includes "administrator" when the subject matter justifies the use.

8064 (9) "Guardian" includes a person who:

8065 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary
8066 or court appointment; or

8067 (b) is appointed by a court to manage the estate of a minor or incapacitated person.

8068 (10) "Highway" includes:

8069 (a) a public bridge;

8070 (b) a county way;

8071 (c) a county road;

8072 (d) a common road; and

8073 (e) a state road.

8074 (11) "Intellectual disability" means a significant, subaverage general intellectual
8075 functioning that:

8076 (a) exists concurrently with deficits in adaptive behavior; and

8077 (b) is manifested during the developmental period as defined in the current edition of
8078 the Diagnostic and Statistical Manual of Mental Disorders, published by the American
8079 Psychiatric Association.

8080 (12) "Intermediate care facility for people with an intellectual disability" means an
8081 intermediate care facility for the mentally retarded, as defined in Title XIX of the Social
8082 Security Act.

8083 [~~(11)~~] (13) "Land" includes:

8084 (a) land;

8085 (b) a tenement;

- 8086 (c) a hereditament;
- 8087 (d) a water right;
- 8088 (e) a possessory right; and
- 8089 (f) a claim.
- 8090 [~~(12)~~] (14) "Month" means a calendar month, unless otherwise expressed.
- 8091 [~~(13)~~] (15) "Oath" includes "affirmation."
- 8092 [~~(14)~~] (16) "Person" means:
- 8093 (a) an individual;
- 8094 (b) an association;
- 8095 (c) an institution;
- 8096 (d) a corporation;
- 8097 (e) a company;
- 8098 (f) a trust;
- 8099 (g) a limited liability company;
- 8100 (h) a partnership;
- 8101 (i) a political subdivision;
- 8102 (j) a government office, department, division, bureau, or other body of government;
- 8103 and
- 8104 (k) any other organization or entity.
- 8105 [~~(15)~~] (17) "Personal property" includes:
- 8106 (a) money;
- 8107 (b) goods;
- 8108 (c) chattels;
- 8109 (d) effects;
- 8110 (e) evidences of a right in action;
- 8111 (f) a written instrument by which a pecuniary obligation, right, or title to property is
- 8112 created, acknowledged, transferred, increased, defeated, discharged, or diminished; and
- 8113 (g) a right or interest in an item described in Subsections [~~(15)~~] (17)(a) through (f).
- 8114 [~~(16)~~] (18) "Personal representative," "executor," and "administrator" include:
- 8115 (a) an executor;
- 8116 (b) an administrator;

- 8117 (c) a successor personal representative;
- 8118 (d) a special administrator; and
- 8119 (e) a person who performs substantially the same function as a person described in
- 8120 Subsections ~~[(16)]~~ (18)(a) through (d) under the law governing the person's status.
- 8121 ~~[(17)]~~ (19) "Policy board," "policy commission," or "policy council" means a board,
- 8122 commission, or council that:
- 8123 (a) is authorized to make policy for the benefit of the general public;
- 8124 (b) is created by, and whose duties are provided by, the constitution or statute; and
- 8125 (c) performs its duties according to its own rules without supervision other than under
- 8126 the general control of another person as provided by statute.
- 8127 ~~[(18)]~~ (20) "Population" is shown by the most recent state or national census, unless
- 8128 expressly provided otherwise.
- 8129 ~~[(19)]~~ (21) "Process" means a writ or summons issued in the course of a judicial
- 8130 proceeding.
- 8131 ~~[(20)]~~ (22) "Property" includes both real and personal property.
- 8132 ~~[(21)]~~ (23) "Real estate" or "real property" includes:
- 8133 (a) land;
- 8134 (b) a tenement;
- 8135 (c) a hereditament;
- 8136 (d) a water right;
- 8137 (e) a possessory right; and
- 8138 (f) a claim.
- 8139 ~~[(22)]~~ (24) "Review board," "review commission," and "review council" mean a board,
- 8140 commission, committee, or council that:
- 8141 (a) is authorized to approve policy made for the benefit of the general public by another
- 8142 body or person;
- 8143 (b) is created by, and whose duties are provided by, statute; and
- 8144 (c) performs its duties according to its own rules without supervision other than under
- 8145 the general control of another person as provided by statute.
- 8146 ~~[(23)]~~ (25) "Road" includes:
- 8147 (a) a public bridge;

8148 (b) a county way;

8149 (c) a county road;

8150 (d) a common road; and

8151 (e) a state road.

8152 [~~(24)~~] (26) "Signature" includes a name, mark, or sign written with the intent to
8153 authenticate an instrument or writing.

8154 [~~(25)~~] (27) "State," when applied to the different parts of the United States, includes a
8155 state, district, or territory of the United States.

8156 [~~(26)~~] (28) "Swear" includes "affirm."

8157 [~~(27)~~] (29) "Testify" means to make an oral statement under oath or affirmation.

8158 [~~(28)~~] (30) "United States" includes each state, district, and territory of the United
8159 States of America.

8160 [~~(29)~~] (31) "Utah Code" means the 1953 recodification of the Utah Code, as amended,
8161 unless the text expressly references a portion of the 1953 recodification of the Utah Code as it
8162 existed:

8163 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or

8164 (b) (i) after the day described in Subsection [~~(29)~~] (31)(a); and

8165 (ii) before the most recent amendment to the referenced portion of the 1953
8166 recodification of the Utah Code.

8167 [~~(30)~~] (32) "Vessel," when used with reference to shipping, includes a steamboat, canal
8168 boat, and every structure adapted to be navigated from place to place.

8169 [~~(31)~~] (33) "Will" includes a codicil.

8170 [~~(32)~~] (34) "Writ" means an order or precept in writing, issued in the name of:

8171 (a) the state;

8172 (b) a court; or

8173 (c) a judicial officer.

8174 [~~(33)~~] (35) "Writing" includes:

8175 (a) printing;

8176 (b) handwriting; and

8177 (c) information stored in an electronic or other medium if the information is retrievable
8178 in a perceivable format.

8179 Section 149. Section **71-10-1** is amended to read:

8180 **71-10-1. Definitions.**

8181 As used in this chapter:

8182 (1) "Active duty" means active military duty and does not include active duty for
8183 training, initial active duty for training, or inactive duty for training.

8184 ~~[(3)]~~ (2) "Government entity" means the state, any county, municipality, local district,
8185 special service district, or any other political subdivision or administrative unit of the state,
8186 including state institutions of education.

8187 ~~[(4)]~~ (3) "Preference eligible" means:

8188 (a) any individual who has served on active duty in the armed forces for more than 180
8189 consecutive days, or was a member of a reserve component who served in a campaign or
8190 expedition for which a campaign medal has been authorized and who has been separated under
8191 honorable conditions;

8192 (b) a ~~[disabled veteran with any]~~ veteran with a disability, regardless of the percentage
8193 of disability;

8194 (c) the spouse or unmarried widow or widower of a veteran;

8195 (d) a purple heart recipient; or

8196 (e) a retired member of the armed forces who retired below the rank of major or its
8197 equivalent.

8198 ~~[(5)]~~ (4) "Veteran" means:

8199 (a) an individual who has served on active duty in the armed forces for more than 180
8200 consecutive days, or was a member of a reserve component who served in a campaign or
8201 expedition for which a campaign medal has been authorized and who has been separated or
8202 retired under honorable conditions; or

8203 (b) any individual incurring an actual service-related injury or disability in the line of
8204 duty whether or not that person completed 180 consecutive days of active duty.

8205 ~~[(2) "Disabled veteran"]~~ (5) "Veteran with a disability" means an individual who has:

8206 (a) been separated or retired from the armed forces under honorable conditions; and

8207 (b) established the existence of a service-connected disability or is receiving
8208 compensation, disability retirement benefits, or pension because of a public statute
8209 administered by the federal Department of Veterans Affairs or a military department.

8210 Section 150. Section **71-10-2** is amended to read:

8211 **71-10-2. Veteran's preference.**

8212 (1) Each government entity shall grant a veteran's preference upon initial hiring to each
8213 preference eligible veteran or preference eligible spouse according to the procedures and
8214 requirements of this chapter.

8215 (2) The personnel officer of any government entity shall add to the score of a
8216 preference eligible who receives a passing score on an examination, or any rating or ranking
8217 mechanism used in selecting an individual for any career service position with the government
8218 entity:

8219 (a) [~~five percent~~] 5% of the total possible score, if [~~he~~] the preference eligible is a
8220 veteran;

8221 (b) [~~10 percent~~] 10% of the total possible score, if [~~he~~] the preference eligible is a
8222 [~~disabled~~] veteran with a disability or a purple heart recipient; or

8223 (c) in the case of a preference eligible spouse, widow, or widower, the same percentage
8224 the qualifying veteran is, or would have been, entitled to.

8225 (3) A preference eligible who applies for a position that does not require an
8226 examination, or where examination results are other than a numeric score, shall be given
8227 preference in interviewing and hiring for the position.

8228 Section 151. Section **71-11-2** is amended to read:

8229 **71-11-2. Definitions.**

8230 As used in this chapter:

8231 (1) "Administrator" means a Veterans' Nursing Home Administrator selected in
8232 accordance with Section 71-11-5.

8233 (2) "Board" means any Veterans' Nursing Home Advisory Board.

8234 (3) "Department" means the Department of Veterans' Affairs created in Section 71-8-2.

8235 (4) "Executive director" means the executive director of the Department of Veterans'
8236 Affairs.

8237 (5) "Home" means any Utah Veterans' Nursing Home.

8238 (6) "Veteran" [~~shall have the same meaning as found~~] is as defined in Subsection
8239 71-10-1[~~(5)~~] (4).

8240 Section 152. Section **72-10-601** is amended to read:

8241 **72-10-601. Definitions.**

8242 As used in this part:

8243 (1) "City" means a municipality of the first class, as defined under Section 10-2-301,
8244 that:

8245 (a) is authorized by statute to operate an airport; and

8246 (b) operates an airport with greater than 10 million annual passengers.

8247 (2) "Division" means the Criminal Investigation and Technical Services Division of the
8248 Department of Public Safety, established in Section 53-10-103.

8249 (3) "Ground transportation service" means transporting passengers for hire or as a
8250 courtesy in connection with a business over public streets pursuant to a license with the city.

8251 (4) (a) "Ground transportation service provider" means a driver who provides ground
8252 transportation service where the pickup or drop-off of a passenger occurs at an airport under a
8253 city's authority.

8254 (b) "Ground transportation service provider" includes:

8255 (i) a taxicab driver;

8256 (ii) a limousine or luxury car driver;

8257 (iii) a bus or minibus driver, except a driver of a transit vehicle, as defined in Section
8258 17B-2a-802;

8259 (iv) a courtesy vehicle or hotel vehicle driver;

8260 (v) a special transportation vehicle driver who transports ~~disabled~~ persons with a
8261 disability; and

8262 (vi) a van driver.

8263 Section 153. Section **75-2-801** is amended to read:

8264 **75-2-801. Disclaimer of property interests -- Time -- Form -- Effect -- Waiver and**
8265 **bar -- Remedy not exclusive -- Application.**

8266 (1) A person, or the representative of a person, to whom an interest in or with respect
8267 to property or an interest therein devolves by whatever means may disclaim it in whole or in
8268 part by delivering or filing a written disclaimer under this section. The right to disclaim exists
8269 notwithstanding:

8270 (a) any limitation on the interest of the disclaimant in the nature of a spendthrift
8271 provision or similar restriction; or

8272 (b) any restriction or limitation on the right to disclaim contained in the governing
8273 instrument. For purposes of this subsection, the "representative of a person" includes a
8274 personal representative of a decedent, a conservator of a [~~disabled~~] person with a disability, a
8275 guardian of a minor or incapacitated person, and an agent acting on behalf of the person within
8276 the authority of a power of attorney.

8277 (2) The following rules govern the time when a disclaimer shall be filed or delivered:

8278 (a) If the property or interest has devolved to the disclaimant under a testamentary
8279 instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not
8280 later than nine months after the death of the deceased owner or deceased donee of a power of
8281 appointment and, if of a future interest, not later than nine months after the event determining
8282 that the taker of the property or interest is finally ascertained and his interest is indefeasibly
8283 vested. The disclaimer shall be filed in the district court of the county in which proceedings for
8284 the administration of the estate of the deceased owner or deceased donee of the power have
8285 been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered
8286 or certified mail, return receipt requested, to any personal representative or other fiduciary of
8287 the decedent or donee of the power.

8288 (b) If a property or interest has devolved to the disclaimant under a nontestamentary
8289 instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not
8290 later than nine months after the effective date of the nontestamentary instrument or contract
8291 and, if of a future interest, not later than nine months after the event determining that the taker
8292 of the property or interest is finally ascertained and his interest is indefeasibly vested. If the
8293 person entitled to disclaim does not know of the existence of the interest, the disclaimer shall
8294 be delivered or filed not later than nine months after the person learns of the existence of the
8295 interest. The effective date of a revocable instrument or contract is the date on which the
8296 maker no longer has power to revoke it or to transfer to [~~himself~~] the maker or another the
8297 entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be
8298 delivered in person or mailed by registered or certified mail, return receipt requested, to the
8299 person who has legal title to or possession of the interest disclaimed.

8300 (c) A surviving joint tenant or tenant by the entireties may disclaim as a separate
8301 interest any property or interest therein devolving to him by right of survivorship. A surviving
8302 joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest

8303 therein that is the subject of a joint tenancy or tenancy by the entireties devolving to [him] the
8304 surviving joint tenant or tenant by the entireties, if the joint tenancy or tenancy by the entireties
8305 was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not
8306 join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit
8307 under it.

8308 (d) If real property or an interest therein is disclaimed, a copy of the disclaimer may be
8309 recorded in the office of the county recorder of the county in which the property or interest
8310 disclaimed is located.

8311 (3) The disclaimer shall:

8312 (a) describe the property or interest disclaimed;

8313 (b) declare the disclaimer and extent thereof; and

8314 (c) be signed by the disclaimant.

8315 (4) The effects of a disclaimer are:

8316 (a) If property or an interest therein devolves to a disclaimant under a testamentary
8317 instrument, under a power of appointment exercised by a testamentary instrument, or under the
8318 laws of intestacy, and the decedent has not provided for another disposition of that interest,
8319 should it be disclaimed, or of disclaimed, or failed interests in general, the disclaimed interest
8320 devolves as if the disclaimant had predeceased the decedent, but if by law or under the
8321 testamentary instrument the descendants of the disclaimant would share in the disclaimed
8322 interest per capita at each generation or otherwise were the disclaimant to predecease the
8323 decedent, then the disclaimed interest passes per capita at each generation, or passes as directed
8324 by the governing instrument, to the descendants of the disclaimant who survive the decedent.
8325 A future interest that takes effect in possession or enjoyment after the termination of the estate
8326 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A
8327 disclaimer relates back for all purposes to the date of death of the decedent.

8328 (b) If property or an interest therein devolves to a disclaimant under a nontestamentary
8329 instrument or contract and the instrument or contract does not provide for another disposition
8330 of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the
8331 disclaimed interest devolves as if the disclaimant has predeceased the effective date of the
8332 instrument or contract, but if by law or under the nontestamentary instrument or contract the
8333 descendants of the disclaimant would share in the disclaimed interest per capita at each

8334 generation or otherwise were the disclaimant to predecease the effective date of the instrument,
8335 then the disclaimed interest passes per capita at each generation, or passes as directed by the
8336 governing instrument, to the descendants of the disclaimant who survive the effective date of
8337 the instrument. A disclaimer relates back for all purposes to that date. A future interest that
8338 takes effect in possession or enjoyment at or after the termination of the disclaimed interest
8339 takes effect as if the disclaimant had died before the effective date of the instrument or contract
8340 that transferred the disclaimed interest.

8341 (c) The disclaimer or the written waiver of the right to disclaim is binding upon the
8342 disclaimant or person waiving and all persons claiming through or under either of them.

8343 (5) The right to disclaim property or an interest therein is barred by:

8344 (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or
8345 interest, or a contract therefor;

8346 (b) a written waiver of the right to disclaim;

8347 (c) an acceptance of the property or interest or a benefit under it; or

8348 (d) a sale of the property or interest under judicial sale made before the disclaimer is
8349 made.

8350 (6) This section does not abridge the right of a person to waive, release, disclaim, or
8351 renounce property or an interest therein under any other statute.

8352 (7) An interest in property that exists on July 1, 1998, as to which, if a present interest,
8353 the time for filing a disclaimer under this section has not expired or, if a future interest, the
8354 interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed
8355 within nine months after July 1, 1998.

8356 Section 154. Section **75-5-303** is amended to read:

8357 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
8358 **person.**

8359 (1) The incapacitated person or any person interested in the incapacitated person's
8360 welfare may petition for a finding of incapacity and appointment of a guardian.

8361 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of
8362 incapacity; and unless the allegedly incapacitated person has counsel of the person's own
8363 choice, it shall appoint an attorney to represent the person in the proceeding the cost of which
8364 shall be paid by the person alleged to be incapacitated, unless the court determines that the

8365 petition is without merit, in which case the attorney fees and court costs shall be paid by the
8366 person filing the petition.

8367 (3) The person alleged to be incapacitated may be examined by a physician appointed
8368 by the court who shall submit a report in writing to the court and may be interviewed by a
8369 visitor sent by the court. The visitor also may interview the person seeking appointment as
8370 guardian, visit the present place of abode of the person alleged to be incapacitated and the place
8371 it is proposed that the person will be detained or reside if the requested appointment is made,
8372 and submit a report in writing to the court.

8373 (4) (a) The person alleged to be incapacitated shall be present at the hearing in person
8374 and see or hear all evidence bearing upon the person's condition. If the person seeking the
8375 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court
8376 shall order an investigation by a court visitor, the costs of which shall be paid by the person
8377 seeking the guardianship.

8378 (b) The investigation by a court visitor is not required if there is clear and convincing
8379 evidence from a physician that the person alleged to be incapacitated [~~suffers from: (a)~~] has:

8380 (i) fourth stage Alzheimer's Disease; [~~(b)~~]

8381 (ii) extended comatosis; or [~~(c) profound mental retardation.~~]

8382 (iii) (A) an intellectual disability; and

8383 (B) an intelligence quotient score under 20 to 25.

8384 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to
8385 present evidence, to cross-examine witnesses, including the court-appointed physician and the
8386 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if
8387 the person alleged to be incapacitated or the person's counsel so requests.

8388 Section 155. Section **75-5-316** is amended to read:

8389 **75-5-316. Expedited guardianship proceedings.**

8390 (1) (a) With regard to persons who are residents of the Utah State Developmental
8391 Center, the expedited process provided by this section may be applied to obtain a limited
8392 guardianship.

8393 (b) For purposes of this section:

8394 (i) "Limited guardianship" means a guardianship solely for the purpose of granting
8395 consent for medical care and for participation in approval of the ward's individualized program

8396 plan.

8397 (ii) "Ward" means a resident of the Utah State Developmental Center who is the
8398 subject of guardianship proceedings under this section.

8399 (2) Any person interested in the incapacitated person's welfare may file a petition for a
8400 finding of incapacity and appointment of a guardian. That person may seek the limited
8401 guardianship pro se, using the forms described in this section. Any fee for filing a petition for a
8402 limited guardianship shall be waived if the guardian is proceeding under this section.

8403 (3) Upon filing a petition for limited guardianship under this section, the court shall set
8404 a date for hearing.

8405 (4) The ward has the right to be present at the hearing and to see and hear all evidence
8406 relating to his condition.

8407 (5) At that hearing the court shall review the affidavit of the superintendent of the Utah
8408 State Developmental Center, described in Subsection (11), and determine whether notice has
8409 been given to the appropriate persons described in Subsection (6).

8410 (6) If the proposed guardian is not a parent or relative of the ward, personal notice shall
8411 be given to the ward's spouse, parents, and any adult children of the ward. Personal notice
8412 shall also be given to other persons as the court may direct.

8413 (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in
8414 the hearing, and may request independent evaluation by a physician appointed by the court.
8415 The physician shall submit his findings to the court in writing.

8416 (8) The court may grant the petition for a limited guardianship and sign the Order of
8417 Appointment if the court finds that:

8418 (a) the appropriate parties have been given notice;

8419 (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah
8420 State Developmental Center and any affidavit or testimony of persons entitled to receive notice
8421 or requested to present evidence under this section; and

8422 (c) it is necessary and desirable to establish the guardianship.

8423 (9) Venue for these expedited guardianship proceedings shall be the same as that
8424 described in Section 75-5-302.

8425 (10) A petition for a limited guardianship shall include the following information:

8426 (a) the interest of the petitioner;

- 8427 (b) the name, age, residence, and address of the ward;
- 8428 (c) verification that the ward is a resident of the Utah State Developmental Center;
- 8429 (d) the name and address of the nearest relative of the ward; and
- 8430 (e) the reason for appointment of guardianship.
- 8431 (11) The petitioner shall also provide the court with an affidavit of the superintendent
- 8432 of the Utah State Developmental Center that includes the following information:
- 8433 (a) that the ward is a resident of the Utah State Developmental Center;
- 8434 (b) the date the ward was originally admitted to the Utah State Developmental Center;
- 8435 (c) the diagnosis of the ward, including a description of the ward's disabling condition,
- 8436 the level of [~~retardation~~] the ward's intellectual disability, and any medical or physical
- 8437 conditions of the ward;
- 8438 (d) that the Utah State Developmental Center is certified as an [~~Intermediate Care~~
- 8439 ~~Facility for the Mentally Retarded under Title XIX of the Social Security Act~~] intermediate
- 8440 care facility for people with an intellectual disability;
- 8441 (e) that because of that certification, the Utah State Developmental Center receives
- 8442 financial participation from the United States Government for its operation and maintenance
- 8443 costs; and
- 8444 (f) that federal regulations under Title XIX require the ward to have a guardian
- 8445 appointed for the sole purpose of giving consent for medical and dental care and of
- 8446 participation in and approval of the ward's individual program plan.
- 8447 (12) If the court finds that, under the requirements of this section the proposed limited
- 8448 guardian should be appointed, it shall enter an order establishing that limited guardianship in
- 8449 substantially the following form:
- 8450 The court finds that:
- 8451 (a) appointment of a limited guardianship for (named ward) is necessary and desirable
- 8452 as a means of providing continuing care and supervision and to ensure his welfare;
- 8453 (b) the ward is incapacitated;
- 8454 (c) (named guardian) is appointed as the limited guardian of (named ward); and
- 8455 (d) the guardianship is a limited guardianship solely for the purpose of:
- 8456 (i) granting permission for medical and dental care on behalf of the ward; and
- 8457 (ii) participation in the development and approval of the ward's individual program

458plan.

8459 (13) Appointment of guardianship under this section places no additional responsibility
8460 or liability on the guardian with regard to the ward. The limited guardianship is solely for
8461 consent for medical care and approval of the ward's individualized program plan, and shall not
8462 be construed to increase or create liability or responsibility for the guardian.

8463 Section 156. Section **75-5-408** is amended to read:

8464 **75-5-408. Permissible court orders.**

8465 (1) The court has the following powers which may be exercised directly or through a
8466 conservator in respect to the estate and affairs of protected persons:

8467 (a) While a petition for appointment of a conservator or other protective order is
8468 pending and after preliminary hearing and without notice to others, the court has power to
8469 preserve and apply the property of the person to be protected as may be required for ~~[his]~~ the
8470 person's benefit or the benefit of ~~[his]~~ the person's dependents.

8471 (b) After hearing and upon determining that a basis for an appointment or other
8472 protective order exists with respect to a minor without other disability, the court has all those
8473 powers over the estate and affairs of the minor which are or might be necessary for the best
8474 interests of the minor, ~~[his]~~ the minor's family, and the members of ~~[his]~~ the minor's household.

8475 (c) After hearing and upon determining that a basis for an appointment or other
8476 protective order exists with respect to a person for reasons other than minority, the court has,
8477 for the benefit of the person and members of ~~[his]~~ the person's household, all the powers over
8478 ~~[his]~~ the person's estate and affairs ~~[which he]~~ that the person could exercise if present and not
8479 under disability, except the power to make a will. These powers include~~[-but are not limited~~
8480 ~~to]~~ the power to make gifts, to convey or release ~~[his]~~ the person's contingent and expectant
8481 interests in property including marital property rights and any right of survivorship incident to
8482 joint tenancy or tenancy by the entirety, to exercise or release ~~[his]~~ the person's powers as
8483 trustee, personal representative, custodian for minors, conservator, or donee of a power of
8484 appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the
8485 estate ~~[which]~~ that may extend beyond ~~[his]~~ the person's disability or life, to exercise options of
8486 the ~~[disabled]~~ person with a disability to purchase securities or other property, to exercise ~~[his]~~
8487 the person's rights to elect options and change beneficiaries under insurance and annuity
8488 policies and to surrender the policies for their cash value, to exercise ~~[his]~~ the person's right to

8489 an elective share in the estate of [~~his~~] the person's deceased spouse, and to renounce any
8490 interest by testate or intestate succession or by inter vivos transfer.

8491 (d) The court may exercise, or direct the exercise of, its authority to exercise or release
8492 powers of appointment of which the protected person is donee, to renounce interests, to make
8493 gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change
8494 beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing,
8495 that it is in the best interests of the protected person, and that [~~he~~] the person either is incapable
8496 of consenting or has consented to the proposed exercise of power.

8497 (2) An order made pursuant to this section determining that a basis for appointment of
8498 a conservator or other protective order exists has no effect on the capacity of the protected
8499 person.

8500 Section 157. Section **75-5-425** is amended to read:

8501 **75-5-425. Distributive duties and powers of conservator.**

8502 (1) A conservator may expend or distribute income or principal of the estate without
8503 court authorization or confirmation for the support, education, care, or benefit of the protected
8504 person and his dependents in accordance with the following principles:

8505 (a) The conservator is to consider recommendations relating to the appropriate standard
8506 of support, education, and benefit for the protected person made by a parent or guardian, if any.
8507 He may not be surcharged for sums paid to persons or organizations actually furnishing
8508 support, education, or care to the protected person pursuant to the recommendations of a parent
8509 or guardian of the protected person unless he knows that the parent or guardian is deriving
8510 personal financial benefit therefrom, including relief from any personal duty of support, or
8511 unless the recommendations are clearly not in the best interests of the protected person.

8512 (b) The conservator is to expend or distribute sums reasonably necessary for the
8513 support, education, care or benefit of the protected person with due regard to:

8514 (i) the size of the estate, the probable duration of the conservatorship and the likelihood
8515 that the protected person, at some future time, may be fully able to manage [~~his~~] the protected
8516 person's affairs and the estate which has been conserved for [~~him~~] the protected person;

8517 (ii) the accustomed standard of living of the protected person and members of [~~his~~] the
8518 protected person's household; and

8519 (iii) other funds or sources used for the support of the protected person.

8520 (c) The conservator may expend funds of the estate for the support of persons legally
8521 dependent on the protected person and others who are members of the protected person's
8522 household who are unable to support themselves and who are in need of support.

8523 (d) Funds expended under this Subsection (1) may be paid by the conservator to any
8524 person, including the protected person to reimburse for expenditures which the conservator
8525 might have made, or in advance for services to be rendered to the protected person when it is
8526 reasonable to expect that they will be performed and where advance payments are customary or
8527 reasonably necessary under the circumstances.

8528 (2) If the estate is ample to provide for the purposes implicit in the distributions
8529 authorized by Subsection (1), a conservator for a protected person other than a minor has power
8530 to make gifts to charity and other objects as the protected person might have been expected to
8531 make, in amounts which do not exceed in total for any year 20% of the income from the estate.

8532 (3) When a person who is a minor and who has not been adjudged [~~disabled~~] to have a
8533 disability under Subsection 75-5-401[~~(1)(b)~~](2)(a) attains [~~his~~] the age of majority, [~~his~~] the
8534 person's conservator, after meeting all prior claims and expenses of administration, shall pay
8535 over and distribute all funds and properties to the former protected person as soon as possible.

8536 (4) When the conservator is satisfied that a protected person's disability (other than
8537 minority) has ceased, the conservator, after meeting all prior claims and expenses of
8538 administration, shall pay over and distribute all funds and properties to the former protected
8539 person as soon as possible.

8540 (5) If a protected person dies, the conservator shall deliver to the court for safekeeping
8541 any will of the deceased protected person [~~which~~] that may have come into [~~his~~] the
8542 conservator's possession, inform the executor or a beneficiary named in the will that [~~he~~] the
8543 conservator has done so, and retain the estate for delivery to a duly appointed personal
8544 representative of the decedent or other persons entitled to it. If after 40 days from the death of
8545 the protected person no other person has been appointed personal representative and no
8546 application or petition for appointment is before the court, the conservator may apply to
8547 exercise the powers and duties of a personal representative so that [~~he~~] the conservator may
8548 proceed to administer and distribute the decedent's estate without additional or further
8549 appointment. Upon application for an order granting the powers of a personal representative to
8550 a conservator, after notice as provided in Section 75-3-310, the court may order the conferral of

8551 the power upon determining that there is no objection and endorse the letters of the conservator
8552 to note that the formerly protected person is deceased and that the conservator has acquired all
8553 of the powers and duties of a personal representative. The making and entry of an order under
8554 this section shall have the effect of an order of appointment of a personal representative as
8555 provided in Section 75-3-308 and Chapter 3, Parts 6 through 10, except that the estate in the
8556 name of the conservator, after administration, may be distributed to the decedent's successors
8557 without prior retransfer to the conservator as personal representative.

8558 Section 158. Section **75-5-501** is amended to read:

8559 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
8560 **responsibilities.**

8561 (1) Whenever a principal designates another [~~his~~] as the principal's attorney-in-fact or
8562 agent by a power of attorney in writing and the writing contains the words "This power of
8563 attorney shall not be affected by disability of the principal," or "This power of attorney shall
8564 become effective upon the disability of the principal," or similar words showing the intent of
8565 the principal that the authority conferred shall be exercisable notwithstanding [~~his~~] the
8566 principal's disability, the authority of the attorney-in-fact or agent is exercisable by [~~him~~] the
8567 attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:

8568 (a) later disability or incapacity of the principal at law or later uncertainty as to whether
8569 the principal is dead or alive; or

8570 (b) the lapse of time since the execution of the instrument, unless the instrument states
8571 a time of termination.

8572 (2) If an attorney-in-fact or agent determines that the principal has become
8573 incapacitated or [~~disabled~~] has acquired a disability and the power of attorney by its terms
8574 remains in effect or becomes effective as a result of a principal's incapacity or disability, the
8575 attorney-in-fact or agent shall:

8576 (a) notify all interested persons of [~~his~~] the attorney-in-fact's or agent's status as the
8577 power of attorney holder within 30 days of the principal's incapacitation, and provide them
8578 with [~~his~~] the attorney-in-fact's or agent's name and address;

8579 (b) provide to any interested persons upon written request, a copy of the power of
8580 attorney;

8581 (c) provide to any interested persons upon written request, an annual accounting of the

8582 assets to which the power of attorney applies, unless the power of attorney specifically directs
8583 that the attorney-in-fact or agent is not required to do so; and

8584 (d) notify all interested persons upon the death of the principal.

8585 (3) All interested persons shall be notified within 10 days if the attorney-in-fact or
8586 agent changes. The notification shall be made by the new attorney-in-fact or agent who shall
8587 then be accountable to the interested persons in accordance with Subsection (2).

8588 (4) All acts done by the attorney-in-fact or agent pursuant to the power during any
8589 period of disability or incompetence or uncertainty as to whether the principal is dead or alive
8590 have the same effect and inure to the benefit of and bind the principal or ~~his~~ the principal's
8591 heirs, devisees, and personal representative as if the principal were alive, competent, and ~~[not~~
8592 ~~disabled]~~ did not have a disability, except as provided in Section 75-5-503.

8593 (5) A conservator may be appointed for a principal even though the principal has a
8594 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the
8595 attorney-in-fact or agent, during the continuance of the appointment, shall account to the
8596 conservator rather than the principal. The conservator, pursuant to court order as provided in
8597 Subsection 75-5-408(1)(d), has the same power the principal would have had, if ~~[he were not~~
8598 ~~disabled or]~~ the principle did not have a disability or was not incompetent, to revoke, suspend,
8599 or terminate all or any part of the power of attorney or agency.

8600 (6) For the purposes of this section, "interested person" means any person entitled to a
8601 part of the principal's estate from the principal's will or through the intestacy laws, whichever is
8602 applicable.

8603 Section 159. Section **76-3-203.5** is amended to read:

8604 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

8605 (1) As used in this section:

8606 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
8607 United States, or any district, possession, or territory of the United States for which the
8608 maximum punishment the offender may be subjected to exceeds one year in prison.

8609 (b) "Habitual violent offender" means a person convicted within the state of any violent
8610 felony and who on at least two previous occasions has been convicted of a violent felony and
8611 committed to either prison in Utah or an equivalent correctional institution of another state or
8612 of the United States either at initial sentencing or after revocation of probation.

- 8613 (c) "Violent felony" means:
- 8614 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
- 8615 any of the following offenses punishable as a felony:
- 8616 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
- 8617 Title 76, Chapter 6, Part 1, Property Destruction;
- 8618 (B) assault by prisoner, Section 76-5-102.5;
- 8619 (C) disarming a police officer, Section 76-5-102.8;
- 8620 (D) aggravated assault, Section 76-5-103;
- 8621 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 8622 (F) mayhem, Section 76-5-105;
- 8623 (G) stalking, Subsection 76-5-106.5(2) or (3);
- 8624 (H) threat of terrorism, Section 76-5-107.3;
- 8625 (I) child abuse, Subsection 76-5-109(2)(a) or (b);
- 8626 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 8627 (K) abuse or neglect of [~~disabled~~] a child with a disability, Section 76-5-110;
- 8628 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 8629 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 8630 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 8631 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 8632 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 8633 (P) rape, Section 76-5-402;
- 8634 (Q) rape of a child, Section 76-5-402.1;
- 8635 (R) object rape, Section 76-5-402.2;
- 8636 (S) object rape of a child, Section 76-5-402.3;
- 8637 (T) forcible sodomy, Section 76-5-403;
- 8638 (U) sodomy on a child, Section 76-5-403.1;
- 8639 (V) forcible sexual abuse, Section 76-5-404;
- 8640 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 8641 (X) aggravated sexual assault, Section 76-5-405;
- 8642 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 8643 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,

8644 Burglary and Criminal Trespass;

8645 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;

8646 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);

8647 (CC) tampering with a witness under Subsection 76-8-508(1);

8648 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;

8649 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);

8650 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat

8651 or by use of force theft by extortion has been committed pursuant to Subsections

8652 76-6-406(2)(a), (b), and (i);

8653 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under

8654 Subsections 76-10-306(3) through (6);

8655 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section

8656 76-10-307;

8657 (II) purchase or possession of a dangerous weapon or handgun by a restricted person

8658 under Section 76-10-503;

8659 (JJ) unlawful discharge of a firearm under Section 76-10-508;

8660 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

8661 (LL) bus hijacking under Section 76-10-1504; and

8662 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or

8663 (ii) any felony violation of a criminal statute of any other state, the United States, or

8664 any district, possession, or territory of the United States which would constitute a violent

8665 felony as defined in this Subsection (1) if committed in this state.

8666 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the

8667 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender

8668 under this section, the penalty for a:

8669 (a) third degree felony is as if the conviction were for a first degree felony;

8670 (b) second degree felony is as if the conviction were for a first degree felony; or

8671 (c) first degree felony remains the penalty for a first degree penalty except:

8672 (i) the convicted person is not eligible for probation; and

8673 (ii) the Board of Pardons and Parole shall consider that the convicted person is a

8674 habitual violent offender as an aggravating factor in determining the length of incarceration.

8675 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
8676 provide notice in the information or indictment that the defendant is subject to punishment as a
8677 habitual violent offender under this section. Notice shall include the case number, court, and
8678 date of conviction or commitment of any case relied upon by the prosecution.

8679 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
8680 intends to deny that:

8681 (A) the defendant is the person who was convicted or committed;

8682 (B) the defendant was represented by counsel or had waived counsel; or

8683 (C) the defendant's plea was understandingly or voluntarily entered.

8684 (ii) The notice of denial shall be served not later than five days prior to trial and shall
8685 state in detail the defendant's contention regarding the previous conviction and commitment.

8686 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
8687 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
8688 of the:

8689 (i) defendant's previous convictions for violent felonies, except as otherwise provided
8690 in the Utah Rules of Evidence; or

8691 (ii) allegation against the defendant of being a habitual violent offender.

8692 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
8693 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
8694 the jury, in which case the allegation shall be tried immediately to the court.

8695 (c) (i) [~~Prior to~~] Before or at the time of sentencing the trier of fact shall determine if
8696 this section applies.

8697 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
8698 and the defendant shall be afforded an opportunity to present any necessary additional
8699 evidence.

8700 (iii) [~~Prior to~~] Before sentencing under this section, the trier of fact shall determine
8701 whether this section is applicable beyond a reasonable doubt.

8702 (d) If any previous conviction and commitment is based upon a plea of guilty or no
8703 contest, there is a rebuttable presumption that the conviction and commitment were regular and
8704 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
8705 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution

8706 to establish by a preponderance of the evidence that the defendant was then represented by
8707 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
8708 was understandingly and voluntarily entered.

8709 (e) If the trier of fact finds this section applicable, the court shall enter that specific
8710 finding on the record and shall indicate in the order of judgment and commitment that the
8711 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
8712 under this section.

8713 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the
8714 provisions of this section.

8715 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
8716 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part
8717 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

8718 (6) The sentencing enhancement described in this section does not apply if:

8719 (a) the offense for which the person is being sentenced is:

8720 (i) a grievous sexual offense;

8721 (ii) child kidnapping, Section 76-5-301.1;

8722 (iii) aggravated kidnapping, Section 76-5-302; or

8723 (iv) forcible sexual abuse, Section 76-5-404; and

8724 (b) applying the sentencing enhancement provided for in this section would result in a
8725 lower maximum penalty than the penalty provided for under the section that describes the
8726 offense for which the person is being sentenced.

8727 Section 160. Section **76-3-406** is amended to read:

8728 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
8729 **offense, or hospitalization may not be granted.**

8730 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
8731 Commitment and Treatment of ~~[Mentally III]~~ Persons with a Mental Illness, except as provided
8732 in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence
8733 shall not be suspended, the court shall not enter a judgment for a lower category of offense, and
8734 hospitalization shall not be ordered, the effect of which would in any way shorten the prison
8735 sentence for any person who commits a capital felony or a first degree felony involving:

8736 (1) Section 76-5-202, aggravated murder;

- 8737 (2) Section 76-5-203, murder;
- 8738 (3) Section 76-5-301.1, child kidnaping;
- 8739 (4) Section 76-5-302, aggravated kidnaping;
- 8740 (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b),
- 8741 (3)(c), or (4);
- 8742 (6) Section 76-5-402.1, rape of a child;
- 8743 (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-
- 8744 5-402.2 (1)(b), (1)(c), or (2);
- 8745 (8) Section 76-5-402.3, object rape of a child;
- 8746 (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
- 8747 76-5-403(4)(b), (4)(c), or (5);
- 8748 (10) Section 76-5-403.1, sodomy on a child;
- 8749 (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
- 8750 Subsection 76-5-404(2)(b) or (3);
- 8751 (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 8752 (13) Section 76-5-405, aggravated sexual assault; or
- 8753 (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).
- 8754 Section 161. Section **76-5-109** is amended to read:
- 8755 **76-5-109. Child abuse -- Child abandonment.**
- 8756 (1) As used in this section:
- 8757 (a) "Child" means a human being who is under 18 years of age.
- 8758 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:
- 8759 (A) intentionally ceases to maintain physical custody of the child;
- 8760 (B) intentionally fails to make reasonable arrangements for the safety, care, and
- 8761 physical custody of the child; and
- 8762 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
- 8763 (II) manifests an intent to permanently not resume physical custody of the child; or
- 8764 (III) for a period of at least 30 days:
- 8765 (Aa) intentionally fails to resume physical custody of the child; and
- 8766 (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- 8767 (ii) "Child abandonment" does not include:

- 8768 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
8769 (B) giving legal consent to a court order for termination of parental rights:
8770 (I) in a legal adoption proceeding; or
8771 (II) in a case where a petition for the termination of parental rights, or the termination
8772 of a guardianship, has been filed.
- 8773 (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in
8774 Section 76-5-109.1.
- 8775 (d) "Enterprise" is as defined in Section 76-10-1602.
- 8776 (e) "Physical injury" means an injury to or condition of a child which impairs the
8777 physical condition of the child, including:
- 8778 (i) a bruise or other contusion of the skin;
8779 (ii) a minor laceration or abrasion;
8780 (iii) failure to thrive or malnutrition; or
8781 (iv) any other condition which imperils the child's health or welfare and which is not a
8782 serious physical injury as defined in Subsection (1)(f).
- 8783 (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
8784 (A) seriously impairs the child's health;
8785 (B) involves physical torture;
8786 (C) causes serious emotional harm to the child; or
8787 (D) involves a substantial risk of death to the child.
- 8788 (ii) "Serious physical injury" includes:
8789 (A) fracture of any bone or bones;
8790 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
8791 shaking, or causing the child's head to impact with an object or surface;
8792 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
8793 object upon the skin or body of the child;
8794 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
8795 (E) any combination of two or more physical injuries inflicted by the same person,
8796 either at the same time or on different occasions;
8797 (F) any damage to internal organs of the body;
8798 (G) any conduct toward a child that results in severe emotional harm, severe

8799 developmental delay or [~~retardation~~] intellectual disability, or severe impairment of the child's
8800 ability to function;

8801 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
8802 of the function of a bodily member, limb, or organ;

8803 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
8804 following the conduct; or

8805 (J) any conduct that results in starvation or failure to thrive or malnutrition that
8806 jeopardizes the child's life.

8807 (2) Any person who inflicts upon a child serious physical injury or, having the care or
8808 custody of such child, causes or permits another to inflict serious physical injury upon a child is
8809 guilty of an offense as follows:

8810 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

8811 (b) if done recklessly, the offense is a felony of the third degree; or

8812 (c) if done with criminal negligence, the offense is a class A misdemeanor.

8813 (3) Any person who inflicts upon a child physical injury or, having the care or custody
8814 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
8815 offense as follows:

8816 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

8817 (b) if done recklessly, the offense is a class B misdemeanor; or

8818 (c) if done with criminal negligence, the offense is a class C misdemeanor.

8819 (4) A person who commits child abandonment, or encourages or causes another to
8820 commit child abandonment, or an enterprise that encourages, commands, or causes another to
8821 commit child abandonment, is:

8822 (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

8823 (b) guilty of a felony of the second degree, if, as a result of the child abandonment:

8824 (i) the child suffers a serious physical injury; or

8825 (ii) the person or enterprise receives, directly or indirectly, any benefit.

8826 (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the
8827 person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and
8828 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection
8829 (5)(b).

8830 (b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to
8831 criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform [Forfeitures]
8832 Forfeiture Procedures Act.

8833 (6) A parent or legal guardian who provides a child with treatment by spiritual means
8834 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices
8835 of an established church or religious denomination of which the parent or legal guardian is a
8836 member or adherent shall not, for that reason alone, be considered to have committed an
8837 offense under this section.

8838 (7) A parent or guardian of a child does not violate this section by selecting a treatment
8839 option for the medical condition of the child, if the treatment option is one that a reasonable
8840 parent or guardian would believe to be in the best interest of the child.

8841 (8) A person is not guilty of an offense under this section for conduct that constitutes:

8842 (a) reasonable discipline or management of a child, including withholding privileges;

8843 (b) conduct described in Section 76-2-401; or

8844 (c) the use of reasonable and necessary physical restraint or force on a child:

8845 (i) in self-defense;

8846 (ii) in defense of others;

8847 (iii) to protect the child; or

8848 (iv) to remove a weapon in the possession of a child for any of the reasons described in
8849 Subsections (8)(c)(i) through (iii).

8850 Section 162. Section **76-5-110** is amended to read:

8851 **76-5-110. Abuse or neglect of a child with a disability.**

8852 (1) As used in this section:

8853 (a) "Abuse" means:

8854 (i) inflicting physical injury, as that term is defined in Section 76-5-109;

8855 (ii) having the care or custody of a [~~disabled~~] child with a disability, causing or
8856 permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

8857 (iii) unreasonable confinement.

8858 (b) "Caretaker" means:

8859 (i) any parent, legal guardian, or other person having under that person's care and
8860 custody a [~~disabled~~] child with a disability; or

8861 (ii) any person, corporation, or public institution that has assumed by contract or court
8862 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a
8863 ~~[disabled]~~ child with a disability.

8864 (c) ~~["Disabled child"]~~ "Child with a disability" means any person under 18 years of age
8865 who is impaired because of mental illness, mental deficiency, physical illness or disability, or
8866 other cause, to the extent that the person is unable to care for the person's own personal safety
8867 or to provide necessities such as food, shelter, clothing, and medical care.

8868 (d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter,
8869 supervision, or medical care.

8870 (2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a
8871 ~~[disabled]~~ child with a disability is guilty of a third degree felony.

8872 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
8873 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
8874 practices of an established church or religious denomination of which the parent or legal
8875 guardian is a member or adherent shall not, for that reason alone, be considered to be in
8876 violation under this section.

8877 (b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a)
8878 does not preclude a court from ordering medical services from a physician licensed to engage
8879 in the practice of medicine to be provided to the child where there is substantial risk of harm to
8880 the child's health or welfare if the treatment is not provided.

8881 (c) A caretaker of a ~~[disabled]~~ child with a disability does not violate this section by
8882 selecting a treatment option for a ~~[disabled child's]~~ medical condition of a child with a
8883 disability, if the treatment option is one that a reasonable caretaker would believe to be in the
8884 best interest of the ~~[disabled]~~ child with a disability.

8885 Section 163. Section **77-13-1** is amended to read:

8886 **77-13-1. Kinds of pleas.**

8887 (1) There are five kinds of pleas to an indictment or information:

8888 (a) not guilty;

8889 (b) guilty;

8890 (c) no contest;

8891 (d) not guilty by reason of insanity; and

8892 (e) guilty [~~and mentally ill~~] with a mental illness at the time of the offense.

8893 (2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

8894 Section 164. Section **77-16a-101** is amended to read:

8895 **CHAPTER 16a. COMMITMENT AND TREATMENT OF PERSONS WITH A**

8896 **MENTAL ILLNESS**

8897 **77-16a-101. Definitions.**

8898 As used in this chapter:

8899 (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

8900 (2) "Department" means the Department of Human Services.

8901 (3) "Executive director" means the executive director of the Department of Human
8902 Services.

8903 (4) "Mental health facility" means the Utah State Hospital or other facility that
8904 provides mental health services under contract with the division, a local mental health
8905 authority, or organization that contracts with a local mental health authority.

8906 (5) [~~"Mentally ill" means the same as that term is~~] "Mental illness" is as defined in
8907 Section 76-2-305.

8908 (6) [~~"Mentally ill offender"~~] "Offender with a mental illness" means an individual who
8909 has been adjudicated guilty [~~and mentally ill~~] with a mental illness, including an individual
8910 who [~~is mentally retarded~~] has an intellectual disability.

8911 [~~(7) "Mentally retarded" means the same as the term "mental retardation", defined in~~
8912 ~~Section 62A-5-101.~~]

8913 [~~(8)~~] (7) "UDC" means the Department of Corrections.

8914 Section 165. Section **77-16a-102** is amended to read:

8915 **77-16a-102. Jury instructions.**

8916 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall
8917 instruct the jury that it may find the defendant:

8918 (a) guilty;

8919 (b) guilty [~~and mentally ill~~] with a mental illness at the time of the offense;

8920 (c) guilty of a lesser offense;

8921 (d) guilty of a lesser offense [~~and mentally ill~~] with a mental illness at the time of the
8922 offense;

8923 (e) not guilty by reason of insanity; or

8924 (f) not guilty.

8925 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or
8926 asserts special mitigation reducing the level of an offense pursuant to Subsection
8927 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction,
8928 the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt
8929 of any charged offense or lesser included offense, it shall also return a special verdict indicating
8930 whether it finds that the defendant [~~was mentally ill~~] had a mental illness at the time of the
8931 offense.

8932 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a
8933 reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental
8934 illness at the time of the offense, it shall return the general verdict of "guilty [~~and mentally ill~~]
8935 with a mental illness at the time of the offense."

8936 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a
8937 reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental
8938 illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense
8939 [~~and mentally ill~~] with a mental illness at the time of the offense."

8940 (d) If the jury finds the defendant guilty of the charged offense or a lesser included
8941 offense and does not find that the defendant [~~was mentally ill~~] had a mental illness at the time
8942 of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special
8943 verdict form indicating that the jury did not find that the defendant [~~mentally ill~~] had a mental
8944 illness at the time of the offense.

8945 (e) The special verdict shall be returned by the jury at the same time as the general
8946 verdict, to indicate the basis for its general verdict.

8947 (3) In determining whether a defendant should be found guilty [~~and mentally ill~~] with a
8948 mental illness at the time of the offense, the jury shall be instructed that the standard of proof
8949 applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall
8950 also be instructed that the standard of preponderance of the evidence does not apply to the
8951 elements establishing a defendant's guilt, and that the proof of the elements establishing a
8952 defendant's guilt of any offense must be proven beyond a reasonable doubt.

8953 (4) (a) When special mitigation based on extreme emotional distress is at issue

8954 pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return
8955 a special verdict.

8956 (b) The special verdict shall be returned by the jury at the same time as the general
8957 verdict, to indicate the basis for its general verdict.

8958 Section 166. Section **77-16a-103** is amended to read:

8959 **77-16a-103. Plea of guilty with a mental illness at the time of the offense.**

8960 (1) Upon a plea of guilty [~~and mentally ill~~] with a mental illness at the time of the
8961 offense being tendered by a defendant to any charge, the court shall hold a hearing within a
8962 reasonable time to determine whether the defendant [~~is~~] currently [~~mentally ill~~] has a mental
8963 illness.

8964 (2) The court may order the department to examine the defendant, and may receive the
8965 testimony of any public or private expert witness offered by the defendant or the prosecutor.
8966 The defendant may be placed in the Utah State Hospital for that examination only upon
8967 approval by the executive director.

8968 (3) (a) A defendant who tenders a plea of guilty [~~and mentally ill~~] with a mental illness
8969 at the time of the offense shall be examined first by the trial judge, in compliance with the
8970 standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty [~~and~~
8971 ~~mentally ill~~] with a mental illness at the time of the offense is a plea of guilty and not a
8972 contingent plea.

8973 (b) If the defendant is later found not to [~~be currently mentally ill~~] have a current
8974 mental illness, that plea remains a valid plea of guilty [~~and mentally ill~~] with a mental illness at
8975 the time of the offense, and the defendant shall be sentenced as any other offender.

8976 (4) If the court concludes that the defendant [~~is currently mentally ill~~] currently has
8977 a mental illness, the defendant's plea shall be accepted and [~~he~~] the defendant shall be
8978 sentenced in accordance with Section 77-16a-104.

8979 (5) (a) When the offense is a state offense, expenses of examination, observation, and
8980 treatment for the defendant shall be paid by the department.

8981 (b) Travel expenses shall be paid by the county where prosecution is commenced.

8982 (c) Expenses of examination for defendants charged with violation of a municipal or
8983 county ordinance shall be paid by the municipality or county that commenced the prosecution.

8984 Section 167. Section **77-16a-104** is amended to read:

8985 **77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine**
8986 **present mental state.**

8987 (1) Upon a verdict of guilty [~~and mentally ill~~] with a mental illness for the offense
8988 charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's
8989 present mental state.

8990 (2) The court may order the department to examine the defendant to determine [~~his~~] the
8991 defendant's mental condition, and may receive the evidence of any public or private expert
8992 witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah
8993 State Hospital for that examination only upon approval of the executive director.

8994 (3) If the court finds by clear and convincing evidence that the defendant [~~is currently~~
8995 ~~mentally ill, it~~] currently has a mental illness, the court shall impose any sentence that could be
8996 imposed under law upon a defendant who [~~is not mentally ill~~] does not have a mental illness
8997 and who is convicted of the same offense, and:

8998 (a) commit [~~him~~] the defendant to the department, in accordance with the provisions of
8999 Section 77-16a-202, if:

9000 (i) the court gives the department the opportunity to provide an evaluation and
9001 recommendation under Subsection (4); and

9002 (ii) the court finds by clear and convincing evidence that:

9003 (A) because of [~~his~~] the defendant's mental illness the defendant poses an immediate
9004 physical danger to self or others, including jeopardizing [~~his~~] the defendant's own or others'
9005 safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to
9006 provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation;
9007 and

9008 (B) the department is able to provide the defendant with treatment, care, custody, and
9009 security that is adequate and appropriate to the defendant's conditions and needs;

9010 (b) order probation in accordance with Section 77-16a-201; or

9011 (c) if the court determines that commitment to the department under Subsection (3)(a)
9012 or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in
9013 the custody of UDC or a county jail as allowed by law.

9014 (4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall,
9015 [~~prior to~~] before making a determination, notify the executive director of the proposed

9016 placement and provide the department with an opportunity to evaluate the defendant and make
9017 a recommendation to the court regarding placement prior to commitment.

9018 (5) If the court finds that the defendant [~~is not currently mentally ill, it~~] does not
9019 currently have a mental illness, the court shall sentence the defendant as it would any other
9020 defendant.

9021 (6) Expenses for examinations ordered under this section shall be paid in accordance
9022 with Subsection 77-16a-103(5).

9023 Section 168. Section **77-16a-201** is amended to read:

9024 **77-16a-201. Probation.**

9025 (1) (a) In felony cases, when the court proposes to place on probation a defendant who
9026 has pled or is found guilty [~~and mentally ill~~] with a mental illness at the time of the offense, it
9027 shall request UDC to provide a presentence investigation report regarding whether probation is
9028 appropriate for that defendant and, if so, recommending a specific treatment program. If the
9029 defendant is placed on probation, that treatment program shall be made a condition of
9030 probation, and the defendant shall remain under the jurisdiction of the sentencing court.

9031 (b) The court may not place an offender who has been convicted of the felony offenses
9032 listed in Section 76-3-406 on probation, regardless of whether [~~he is or has been mentally ill~~]
9033 the offender has, or had, a mental illness.

9034 (2) The period of probation for a felony offense committed by a person who has been
9035 found guilty [~~and mentally ill~~] with a mental illness at the time of the offense may be for no
9036 less than five years. Probation for those offenders may not be subsequently reduced by the
9037 sentencing court without consideration of an updated report on the mental health status of the
9038 defendant.

9039 (3) (a) Treatment ordered by the court under this section may be provided by or under
9040 contract with the department, a mental health facility, a local mental health authority, or, with
9041 the approval of the sentencing court, any other public or private mental health provider.

9042 (b) The entity providing treatment under this section shall file a report with the
9043 defendant's probation officer at least every six months during the term of probation.

9044 (c) Any request for termination of probation regarding a defendant who is receiving
9045 treatment under this section shall include a current mental health report prepared by the
9046 treatment provider.

9047 (4) Failure to continue treatment or any other condition of probation, except by
9048 agreement with the entity providing treatment and the sentencing court, is a basis for initiating
9049 probation violation hearings.

9050 (5) The court may not release [~~a mentally ill offender~~] an offender with a mental illness
9051 into the community, as a part of probation, if it finds by clear and convincing evidence that [~~he~~]
9052 the offender:

9053 (a) poses an immediate physical danger to [~~himself~~] self or others, including
9054 jeopardizing [~~his~~] the offender's own or others' safety, health, or welfare if released into the
9055 community; or

9056 (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and
9057 shelter, if released into the community.

9058 (6) [~~A mentally ill offender~~] An offender with a mental illness who is not eligible for
9059 release into the community under the provisions of Subsection (5) may be placed by the court,
9060 on probation, in an appropriate mental health facility.

9061 Section 169. Section **77-16a-202** is amended to read:

9062 **77-16a-202. Person found guilty with a mental illness -- Commitment to**
9063 **department -- Admission to Utah State Hospital.**

9064 (1) In sentencing and committing [~~a mentally ill~~] an offender with a mental illness to
9065 the department under Subsection 77-16a-104(3)(a), the court shall:

9066 (a) sentence the offender to a term of imprisonment and order that he be committed to
9067 the department and admitted to the Utah State Hospital for care and treatment until transferred
9068 to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for
9069 readmission to the Utah State Hospital whenever the requirements and conditions of Section
9070 77-16a-204 are met; or

9071 (b) sentence the offender to a term of imprisonment and order that [~~he~~] the offender be
9072 committed to the department for care and treatment for no more than 18 months, or until the
9073 offender's condition has been stabilized to the point that commitment to the department and
9074 admission to the Utah State Hospital is no longer necessary to ensure adequate mental health
9075 treatment, whichever occurs first. At the expiration of that time, the court may recall the
9076 sentence and commitment, and resentence the offender. A commitment and retention of
9077 jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that

9078 specification is not included in the sentencing order, the offender shall be committed in
9079 accordance with Subsection (1)(a).

9080 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of
9081 ~~[a mentally ill]~~ an offender with a mental illness who has been convicted of a capital felony. In
9082 capital cases, the court shall make the findings required by this section after the capital
9083 sentencing proceeding mandated by Section 76-3-207.

9084 (3) When an offender is committed to the department and admitted to the Utah State
9085 Hospital under Subsection (1)(b), the department shall provide the court with reports of the
9086 offender's mental health status every six months. Those reports shall be prepared in accordance
9087 with the requirements of Section 77-16a-203. Additionally, the court may appoint an
9088 independent examiner to assess the mental health status of the offender.

9089 (4) The period of commitment to the department and admission to the Utah State
9090 Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section
9091 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of
9092 that sentence, the administrator of the facility where the offender is located may initiate civil
9093 proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services
9094 ~~[to]~~ for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health
9095 Act.

9096 Section 170. Section **77-16a-203** is amended to read:

9097 **77-16a-203. Review of offenders with a mental illness committed to department --**
9098 **Recommendations for transfer to Department of Corrections.**

9099 (1) (a) The executive director shall designate a review team of at least three qualified
9100 staff members, including at least one licensed psychiatrist, to evaluate the mental condition of
9101 each ~~[mentally ill]~~ offender with a mental illness committed to it in accordance with Section
9102 77-16a-202, at least once every six months.

9103 (b) If the offender ~~[is mentally retarded]~~ has an intellectual disability, the review team
9104 shall include at least one individual who is a designated ~~[mental retardation]~~ intellectual
9105 disability professional, as defined in Section 62A-5-101.

9106 (2) At the conclusion of its evaluation, the review team described in Subsection (1)
9107 shall make a report to the executive director:

9108 (a) regarding the offender's:

9109 (i) current mental condition;

9110 (ii) progress since commitment; and

9111 (iii) prognosis; and

9112 (b) that includes a recommendation regarding whether the [~~mentally ill~~] offender with a

9113 mental illness should be:

9114 (i) transferred to UDC; or

9115 (ii) remain in the custody of the department.

9116 (3) (a) The executive director shall notify the UDC medical administrator, and the

9117 board's mental health adviser that [~~a mentally ill~~] an offender with a mental illness is eligible

9118 for transfer to UDC if the review team finds that the offender:

9119 (i) [~~is~~] no longer [~~mentally ill~~] has a mental illness; or

9120 (ii) [~~is still mentally ill~~] has a mental illness and may continue to be a danger to

9121 [~~himself~~] self or others, but can be controlled if adequate care, medication, and treatment are

9122 provided by UDC; and

9123 (iii) the offender's condition has been stabilized to the point that commitment to the

9124 department and admission to the Utah State Hospital are no longer necessary to ensure

9125 adequate mental health treatment.

9126 (b) The administrator of the mental health facility where the offender is located shall

9127 provide the UDC medical administrator with a copy of the reviewing staff's recommendation

9128 and:

9129 (i) all available clinical facts;

9130 (ii) the diagnosis;

9131 (iii) the course of treatment received at the mental health facility;

9132 (iv) the prognosis for remission of symptoms;

9133 (v) the potential for recidivism;

9134 (vi) an estimation of the offender's dangerousness, either to [~~himself~~] self or others;

9135 and

9136 (vii) recommendations for future treatment.

9137 Section 171. Section **77-16a-204** is amended to read:

9138 **77-16a-204. UDC acceptance of transfer of persons found guilty with a mental**

9139 **illness -- Retransfer from UDC to department for admission to the Utah State Hospital.**

9140 (1) The UDC medical administrator shall designate a transfer team of at least three
9141 qualified staff members, including at least one licensed psychiatrist, to evaluate the
9142 recommendation made by the department's review team pursuant to Section 77-16a-203. If the
9143 offender [~~is mentally retarded~~] has an intellectual disability, the transfer team shall include at
9144 least one person who has expertise in testing and diagnosis of [~~mentally retarded individuals~~]
9145 people with intellectual disabilities.

9146 (2) The transfer team shall concur in the recommendation if [~~it~~] the transfer team
9147 determines that UDC can provide the [~~mentally ill~~] offender with a mental illness with
9148 adequate mental health treatment.

9149 (3) The UDC transfer team and medical administrator shall recommend the facility in
9150 which the offender should be placed and the treatment to be provided in order for [~~his~~] the
9151 offender's mental condition to remain stabilized to the director of the Division of Institutional
9152 Operations, within the Department of Corrections.

9153 (4) In the event that the department and UDC do not agree on the transfer of [~~a~~
9154 ~~mentally ill~~] an offender with a mental illness, the administrator of the mental health facility
9155 where the offender is located shall notify the mental health adviser for the board, in writing, of
9156 the dispute. The mental health adviser shall be provided with copies of all reports and
9157 recommendations. The board's mental health adviser shall make a recommendation to the
9158 board on the transfer and the board shall issue its decision within 30 days.

9159 (5) UDC shall notify the board whenever [~~a mentally ill~~] an offender with a mental
9160 illness is transferred from the department to UDC.

9161 (6) When [~~a mentally ill~~] an offender with a mental illness sentenced under Section
9162 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is
9163 evaluated and it is determined that the offender's mental condition has deteriorated or that the
9164 offender has become mentally unstable, the offender may be readmitted to the Utah State
9165 Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

9166 (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall
9167 remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

9168 (8) [~~A mentally ill~~] An offender with a mental illness who has been readmitted to the
9169 Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance
9170 with the provisions of Section 77-16a-203.

9171 Section 172. Section **77-16a-205** is amended to read:

9172 **77-16a-205. Parole.**

9173 (1) When [~~a mentally ill~~] an offender with a mental illness who has been committed to
9174 the department becomes eligible to be considered for parole, the board shall request a
9175 recommendation from the executive director and from UDC before placing the offender on
9176 parole.

9177 (2) Before setting a parole date, the board shall request that its mental health adviser
9178 prepare a report regarding the [~~mentally ill~~] offender with a mental illness, including:

9179 (a) all available clinical facts;

9180 (b) the diagnosis;

9181 (c) the course of treatment received at the mental health facility;

9182 (d) the prognosis for remission of symptoms;

9183 (e) potential for recidivism;

9184 (f) an estimation of the [~~mentally ill offender's~~] dangerousness of the offender with a
9185 mental illness either to [~~himself~~] self or others; and

9186 (g) recommendations for future treatment.

9187 (3) Based on the report described in Subsection (2), the board may place the [~~mentally~~
9188 ~~ill~~] offender with a mental illness on parole. The board may require mental health treatment as
9189 a condition of parole. If treatment is ordered, failure to continue treatment, except by
9190 agreement with the treatment provider, and the board, is a basis for initiation of parole
9191 violation hearings by the board.

9192 (4) UDC, through Adult Probation and Parole, shall monitor the status of [~~a mentally~~
9193 ~~ill~~] an offender with a mental illness who has been placed on parole. UDC may provide
9194 treatment by contracting with the department, a local mental health authority, any other public
9195 or private provider, or in-house staff.

9196 (5) The period of parole may be no less than five years, or until expiration of the
9197 defendant's sentence, whichever occurs first. The board may not subsequently reduce the
9198 period of parole without considering an updated report on the offender's current mental
9199 condition.

9200 Section 173. Section **77-16a-302** is amended to read:

9201 **77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

9202 (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing
9203 within 10 days to determine whether the defendant [is] currently [~~mentally ill~~] has a mental
9204 illness. The defense counsel and prosecutors may request further evaluations and present
9205 testimony from those examiners.

9206 (2) After the hearing and upon consideration of the record, the court shall order the
9207 defendant committed to the department if it finds by clear and convincing evidence that:

9208 (a) the defendant [~~is still mentally ill~~] has a mental illness; and

9209 (b) because of that mental illness the defendant presents a substantial danger to
9210 [~~himself~~] self or others.

9211 (3) The period of commitment described in Subsection (2) may not exceed the period
9212 for which the defendant could be incarcerated had [~~he~~] the defendant been convicted and
9213 received the maximum sentence for the crime of which [~~he~~] the defendant was accused. At the
9214 time that period expires, involuntary civil commitment proceedings may be instituted in
9215 accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

9216 Section 174. Section ~~77-16a-304~~ is amended to read:

9217 **77-16a-304. Review after commitment.**

9218 (1) (a) The executive director, or the executive director's designee, shall establish a
9219 review team of at least three qualified staff members to review the defendant's mental condition
9220 at least every six months.

9221 (b) The team described in Subsection (1)(a) shall include:

9222 (i) at least one psychiatrist; and

9223 (ii) if the defendant [~~is mentally retarded~~] has an intellectual disability, at least one
9224 staff member who is a designated [~~mental retardation~~] intellectual disability professional[~~, as~~
9225 ~~defined in Section 62A-5-101~~].

9226 (2) If the review team described in Subsection (1) finds that the defendant has
9227 recovered from the defendant's mental illness, or, that the defendant [is] still [~~mentally ill~~] has a
9228 mental illness but does not present a substantial danger to [~~himself~~] self or others, the executive
9229 director, or the executive director's designee, shall:

9230 (a) notify the court that committed the defendant that the defendant is a candidate for
9231 discharge; and

9232 (b) provide the court with a report stating the facts that form the basis for the

9233 recommendation.

9234 (3) (a) The court shall conduct a hearing within 10 business days after receipt of the
9235 executive director's, or the executive director's designee's, notification.

9236 (b) The court clerk shall provide notice of the date and time of the hearing to:

9237 (i) the prosecuting attorney;

9238 (ii) the defendant's attorney; and

9239 (iii) any victim of the crime for which the defendant was found not guilty by reason of
9240 insanity.

9241 (4) (a) The court shall order that the defendant be discharged from commitment if the
9242 court finds that the defendant:

9243 (i) ~~[is]~~ no longer ~~[mentally ill]~~ has a mental illness; or

9244 (ii) ~~[is mentally ill]~~ has a mental illness, but no longer presents a substantial danger to
9245 ~~[himself]~~ self or others.

9246 (b) The court shall order the person conditionally released in accordance with Section
9247 77-16a-305 if the court finds that the defendant:

9248 (i) ~~[is still mentally ill]~~ has a mental illness;

9249 (ii) is a substantial danger to ~~[himself]~~ self or others; and

9250 (iii) can be controlled adequately if conditionally released with treatment as a condition
9251 of release.

9252 (c) The court shall order that the commitment be continued if the court finds that the
9253 defendant:

9254 (i) has not recovered from ~~[his]~~ the defendant's mental illness;

9255 (ii) is a substantial danger to ~~[himself]~~ self or others; and

9256 (iii) cannot adequately be controlled if conditionally released on supervision.

9257 (d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a
9258 defendant whose mental illness is in remission as a result of medication or hospitalization if it
9259 can be determined within reasonable medical probability that without continued medication or
9260 hospitalization the defendant's mental illness will reoccur, making the defendant a substantial
9261 danger to ~~[himself]~~ self or others.

9262 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection

9263 (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

9264 Section 175. Section **77-16a-306** is amended to read:

9265 **77-16a-306. Continuing review -- Discharge.**

9266 (1) Each entity that provides treatment for a defendant committed to the department as
9267 not guilty by reason of insanity under this part shall review the status of each defendant at least
9268 once every six months. If the treatment provider finds that a defendant has recovered from
9269 ~~[his]~~ the defendant's mental illness, or ~~[if still mentally ill]~~, if the defendant has a mental
9270 illness, no longer presents a substantial danger to ~~[himself]~~ self or others, it shall notify the
9271 executive director of its findings.

9272 (2) Upon receipt of notification under Subsection (1), the executive director shall
9273 designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If
9274 that review team concurs with the treatment provider's assessment, the executive director shall
9275 notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a
9276 candidate for discharge. The court shall conduct a hearing, in accordance with Section
9277 77-16a-302, within 10 business days after receipt of that notice.

9278 (3) The court may not discharge an individual whose mental illness is in remission as a
9279 result of medication or hospitalization if it can be determined within reasonable medical
9280 probability that without continued medication or hospitalization the defendant's mental illness
9281 will reoccur, making the defendant a substantial danger to ~~[himself]~~ self or others.

9282 Section 176. Section **77-18-1** is amended to read:

9283 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
9284 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
9285 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
9286 **monitoring.**

9287 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
9288 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,
9289 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

9290 (2) (a) On a plea of guilty, guilty ~~[and mentally ill]~~ with a mental illness, no contest, or
9291 conviction of any crime or offense, the court may, after imposing sentence, suspend the
9292 execution of the sentence and place the defendant on probation. The court may place the
9293 defendant:

9294 (i) on probation under the supervision of the Department of Corrections except in cases

9295 of class C misdemeanors or infractions;

9296 (ii) on probation with an agency of local government or with a private organization; or

9297 (iii) on bench probation under the jurisdiction of the sentencing court.

9298 (b) (i) The legal custody of all probationers under the supervision of the department is

9299 with the department.

9300 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court

9301 is vested as ordered by the court.

9302 (iii) The court has continuing jurisdiction over all probationers.

9303 (3) (a) The department shall establish supervision and presentence investigation

9304 standards for all individuals referred to the department. These standards shall be based on:

9305 (i) the type of offense;

9306 (ii) the demand for services;

9307 (iii) the availability of agency resources;

9308 (iv) the public safety; and

9309 (v) other criteria established by the department to determine what level of services

9310 shall be provided.

9311 (b) Proposed supervision and investigation standards shall be submitted to the Judicial

9312 Council and the Board of Pardons and Parole on an annual basis for review and comment prior

9313 to adoption by the department.

9314 (c) The Judicial Council and the department shall establish procedures to implement

9315 the supervision and investigation standards.

9316 (d) The Judicial Council and the department shall annually consider modifications to

9317 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider

9318 appropriate.

9319 (e) The Judicial Council and the department shall annually prepare an impact report

9320 and submit it to the appropriate legislative appropriations subcommittee.

9321 (4) Notwithstanding other provisions of law, the department is not required to

9322 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to

9323 conduct presentence investigation reports on class C misdemeanors or infractions. However,

9324 the department may supervise the probation of class B misdemeanants in accordance with

9325 department standards.

9326 (5) (a) [~~Prior to~~] Before the imposition of any sentence, the court may, with the
9327 concurrence of the defendant, continue the date for the imposition of sentence for a reasonable
9328 period of time for the purpose of obtaining a presentence investigation report from the
9329 department or information from other sources about the defendant.

9330 (b) The presentence investigation report shall include a victim impact statement
9331 according to guidelines set in Section 77-38a-203 describing the effect of the crime on the
9332 victim and the victim's family.

9333 (c) The presentence investigation report shall include a specific statement of pecuniary
9334 damages, accompanied by a recommendation from the department regarding the payment of
9335 restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime
9336 Victims Restitution Act.

9337 (d) The presentence investigation report shall include:

9338 (i) findings from any screening and any assessment of the offender conducted under
9339 Section 77-18-1.1; and

9340 (ii) recommendations for treatment of the offender.

9341 (e) The contents of the presentence investigation report are protected and are not
9342 available except by court order for purposes of sentencing as provided by rule of the Judicial
9343 Council or for use by the department.

9344 (6) (a) The department shall provide the presentence investigation report to the
9345 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
9346 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
9347 presentence investigation report, which have not been resolved by the parties and the
9348 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
9349 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
9350 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
9351 court shall make a determination of relevance and accuracy on the record.

9352 (b) If a party fails to challenge the accuracy of the presentence investigation report at
9353 the time of sentencing, that matter shall be considered to be waived.

9354 (7) At the time of sentence, the court shall receive any testimony, evidence, or
9355 information the defendant or the prosecuting attorney desires to present concerning the
9356 appropriate sentence. This testimony, evidence, or information shall be presented in open court

9357 on record and in the presence of the defendant.

9358 (8) While on probation, and as a condition of probation, the court may require that the
9359 defendant:

9360 (a) perform any or all of the following:

9361 (i) pay, in one or several sums, any fine imposed at the time of being placed on
9362 probation;

9363 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

9364 (iii) provide for the support of others for whose support the defendant is legally liable;

9365 (iv) participate in available treatment programs, including any treatment program in
9366 which the defendant is currently participating, if the program is acceptable to the court;

9367 (v) serve a period of time, not to exceed one year, in a county jail designated by the
9368 department, after considering any recommendation by the court as to which jail the court finds
9369 most appropriate;

9370 (vi) serve a term of home confinement, which may include the use of electronic
9371 monitoring;

9372 (vii) participate in compensatory service restitution programs, including the
9373 compensatory service program provided in Section 76-6-107.1;

9374 (viii) pay for the costs of investigation, probation, and treatment services;

9375 (ix) make restitution or reparation to the victim or victims with interest in accordance
9376 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

9377 (x) comply with other terms and conditions the court considers appropriate; and

9378 (b) if convicted on or after May 5, 1997:

9379 (i) complete high school classwork and obtain a high school graduation diploma, a
9380 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
9381 not received the diploma, GED certificate, or vocational certificate prior to being placed on
9382 probation; or

9383 (ii) provide documentation of the inability to obtain one of the items listed in
9384 Subsection (8)(b)(i) because of:

9385 (A) a diagnosed learning disability; or

9386 (B) other justified cause.

9387 (9) The department shall collect and disburse the account receivable as defined by

9388 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

9389 (a) the parole period and any extension of that period in accordance with Subsection
9390 77-27-6(4); and

9391 (b) the probation period in cases for which the court orders supervised probation and
9392 any extension of that period by the department in accordance with Subsection (10).

9393 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
9394 upon completion without violation of 36 months probation in felony or class A misdemeanor
9395 cases, or 12 months in cases of class B or C misdemeanors or infractions.

9396 (ii) (A) If, upon expiration or termination of the probation period under Subsection
9397 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
9398 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
9399 probation for the limited purpose of enforcing the payment of the account receivable.

9400 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
9401 judgments any unpaid balance not already recorded and immediately transfer responsibility to
9402 collect the account to the Office of State Debt Collection.

9403 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
9404 own motion, the court may require the defendant to show cause why the defendant's failure to
9405 pay should not be treated as contempt of court.

9406 (b) (i) The department shall notify the sentencing court, the Office of State Debt
9407 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
9408 supervised probation will occur by law.

9409 (ii) The notification shall include a probation progress report and complete report of
9410 details on outstanding accounts receivable.

9411 (11) (a) (i) Any time served by a probationer outside of confinement after having been
9412 charged with a probation violation and prior to a hearing to revoke probation does not
9413 constitute service of time toward the total probation term unless the probationer is exonerated
9414 at a hearing to revoke the probation.

9415 (ii) Any time served in confinement awaiting a hearing or decision concerning
9416 revocation of probation does not constitute service of time toward the total probation term
9417 unless the probationer is exonerated at the hearing.

9418 (b) The running of the probation period is tolled upon the filing of a violation report

9419 with the court alleging a violation of the terms and conditions of probation or upon the issuance
9420 of an order to show cause or warrant by the court.

9421 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing
9422 by the probationer or upon a hearing and a finding in court that the probationer has violated the
9423 conditions of probation.

9424 (ii) Probation may not be revoked except upon a hearing in court and a finding that the
9425 conditions of probation have been violated.

9426 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to
9427 constitute violation of the conditions of probation, the court that authorized probation shall
9428 determine if the affidavit establishes probable cause to believe that revocation, modification, or
9429 extension of probation is justified.

9430 (ii) If the court determines there is probable cause, it shall cause to be served on the
9431 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show
9432 cause why the defendant's probation should not be revoked, modified, or extended.

9433 (c) (i) The order to show cause shall specify a time and place for the hearing and shall
9434 be served upon the defendant at least five days prior to the hearing.

9435 (ii) The defendant shall show good cause for a continuance.

9436 (iii) The order to show cause shall inform the defendant of a right to be represented by
9437 counsel at the hearing and to have counsel appointed if the defendant is indigent.

9438 (iv) The order shall also inform the defendant of a right to present evidence.

9439 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

9440 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney
9441 shall present evidence on the allegations.

9442 (iii) The persons who have given adverse information on which the allegations are
9443 based shall be presented as witnesses subject to questioning by the defendant unless the court
9444 for good cause otherwise orders.

9445 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
9446 and present evidence.

9447 (e) (i) After the hearing the court shall make findings of fact.

9448 (ii) Upon a finding that the defendant violated the conditions of probation, the court
9449 may order the probation revoked, modified, continued, or that the entire probation term

9450 commence anew.

9451 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously
9452 imposed shall be executed.

9453 (13) The court may order the defendant to commit himself or herself to the custody of
9454 the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as
9455 a condition of probation or stay of sentence, only after the superintendent of the Utah State
9456 Hospital or the superintendent's designee has certified to the court that:

9457 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

9458 (b) treatment space at the hospital is available for the defendant; and

9459 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
9460 treatment over the defendants described in this Subsection (13).

9461 (14) Presentence investigation reports are classified protected in accordance with Title
9462 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
9463 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
9464 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
9465 this section, the department may disclose the presentence investigation only when:

9466 (a) ordered by the court pursuant to Subsection 63G-2-202(7);

9467 (b) requested by a law enforcement agency or other agency approved by the department
9468 for purposes of supervision, confinement, and treatment of the offender;

9469 (c) requested by the Board of Pardons and Parole;

9470 (d) requested by the subject of the presentence investigation report or the subject's
9471 authorized representative; or

9472 (e) requested by the victim of the crime discussed in the presentence investigation
9473 report or the victim's authorized representative, provided that the disclosure to the victim shall
9474 include only information relating to statements or materials provided by the victim, to the
9475 circumstances of the crime including statements by the defendant, or to the impact of the crime
9476 on the victim or the victim's household.

9477 (15) (a) The court shall consider home confinement as a condition of probation under
9478 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

9479 (b) The department shall establish procedures and standards for home confinement,
9480 including electronic monitoring, for all individuals referred to the department in accordance

9481 with Subsection (16).

9482 (16) (a) If the court places the defendant on probation under this section, it may order
9483 the defendant to participate in home confinement through the use of electronic monitoring as
9484 described in this section until further order of the court.

9485 (b) The electronic monitoring shall alert the department and the appropriate law
9486 enforcement unit of the defendant's whereabouts.

9487 (c) The electronic monitoring device shall be used under conditions which require:

9488 (i) the defendant to wear an electronic monitoring device at all times; and

9489 (ii) that a device be placed in the home of the defendant, so that the defendant's
9490 compliance with the court's order may be monitored.

9491 (d) If a court orders a defendant to participate in home confinement through electronic
9492 monitoring as a condition of probation under this section, it shall:

9493 (i) place the defendant on probation under the supervision of the Department of
9494 Corrections;

9495 (ii) order the department to place an electronic monitoring device on the defendant and
9496 install electronic monitoring equipment in the residence of the defendant; and

9497 (iii) order the defendant to pay the costs associated with home confinement to the
9498 department or the program provider.

9499 (e) The department shall pay the costs of home confinement through electronic
9500 monitoring only for those persons who have been determined to be indigent by the court.

9501 (f) The department may provide the electronic monitoring described in this section
9502 either directly or by contract with a private provider.

9503 Section 177. Section **77-18-1.1** is amended to read:

9504 **77-18-1.1. Screening, assessment, and treatment.**

9505 (1) As used in this section:

9506 (a) "Assessment" has the same meaning as in Section 41-6a-501.

9507 (b) "Convicted" means:

9508 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~]
9509 with a mental illness, or no contest; and

9510 (ii) conviction of any crime or offense.

9511 (c) "Screening" has the same meaning as in Section 41-6a-501.

9512 (d) "Substance abuse treatment" means treatment obtained through a substance abuse
9513 program that is licensed by the Office of Licensing within the Department of Human Services.

9514 (2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender
9515 Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local
9516 substance abuse authority regarding available resources, order offenders convicted of a felony
9517 to:

9518 (a) participate in a screening prior to sentencing;

9519 (b) participate in an assessment prior to sentencing if the screening indicates an
9520 assessment to be appropriate; and

9521 (c) participate in substance abuse treatment if:

9522 (i) the assessment indicates treatment to be appropriate;

9523 (ii) the court finds treatment to be appropriate for the offender; and

9524 (iii) the court finds the offender to be an appropriate candidate for community-based
9525 supervision.

9526 (3) The findings from any screening and any assessment conducted under this section
9527 shall be part of the presentence investigation report submitted to the court [~~prior to~~] before
9528 sentencing of the offender.

9529 (4) Monies appropriated by the Legislature to assist in the funding of the screening,
9530 assessment, substance abuse treatment, and supervision provided under this section are not
9531 subject to any requirement regarding matching funds from a state or local governmental entity.

9532 Section 178. Section **77-18-8.3** is amended to read:

9533 **77-18-8.3. Special condition of sentence during incarceration -- Penalty.**

9534 (1) At the time of sentence, the court may order the defendant to be prohibited from
9535 directly or indirectly engaging in any profit or benefit generating activity relating to the
9536 publication of facts or circumstances pertaining to the defendant's involvement in the criminal
9537 act for which the defendant is convicted.

9538 (2) The court's order may prohibit the defendant from contracting with any person,
9539 firm, corporation, partnership, association, or other legal entity with respect to the commission
9540 and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine
9541 article, tape recording, phonograph record, radio, or television presentations, live entertainment
9542 of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions

9543 regarding the criminal conduct.

9544 (3) The court may order that the prohibition includes any event undertaken and
9545 experienced by the defendant while avoiding apprehension from the authorities or while facing
9546 criminal charges.

9547 (4) The court may order that any action taken by the defendant by way of execution of
9548 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9549 court's order may be found to be contempt.

9550 (5) The Department of Corrections shall notify the attorney general of any alleged
9551 violation of the court's order under this section.

9552 (6) The Board of Pardons and Parole and any county jail administrator may consider
9553 the court's finding in any incarceration release decision concerning the incarcerated defendant.

9554 (7) For purposes of this section:

9555 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9556 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9557 offense; and

9558 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9559 representatives acting on the defendant's authority.

9560 Section 179. Section **77-18-8.5** is amended to read:

9561 **77-18-8.5. Special condition of probation -- Penalty.**

9562 (1) In accordance with Subsections 77-18-1(2) and (8), the court may place the
9563 defendant on probation and as a condition of probation, the court may order the defendant to be
9564 prohibited from directly or indirectly engaging in any profit or benefit generating activity
9565 relating to the publication of facts or circumstances pertaining to the defendant's involvement
9566 in the criminal act for which the defendant is convicted.

9567 (2) The court's order may prohibit the defendant from contracting with any person,
9568 firm, corporation, partnership, association, or other legal entity with respect to the commission
9569 and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine
9570 article, tape recording, phonograph record, radio, or television presentations, live entertainment
9571 of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
9572 regarding the criminal conduct.

9573 (3) The court may order that the prohibition includes any event undertaken and

9574 experienced by the defendant while avoiding apprehension from the authorities or while facing
9575 criminal charges.

9576 (4) The court may order that any action taken by the defendant by way of execution of
9577 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9578 court's order shall be found to be in contempt.

9579 (5) Adult Probation and Parole shall notify the attorney general of any alleged violation
9580 of the court's order under this section.

9581 (6) The violation of the court's order shall be considered a violation of probation.

9582 (7) For purposes of this section:

9583 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9584 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9585 offense; and

9586 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9587 representatives acting on the defendant's authority.

9588 Section 180. Section **77-27-2** is amended to read:

9589 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

9590 (1) There is created the Board of Pardons and Parole. The board shall consist of five
9591 full-time members and not more than five pro tempore members to be appointed by the
9592 governor with the consent of the Senate as provided in this section. The members of the board
9593 shall be resident citizens of the state. The governor shall establish salaries for the members of
9594 the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer
9595 Compensation.

9596 (2) (a) (i) The full-time board members shall serve terms of five years. The terms of
9597 the full-time members shall be staggered so one board member is appointed for a term of five
9598 years on March 1 of each year.

9599 (ii) The pro tempore members shall serve terms of five years, beginning on March 1 of
9600 the year of appointment, with no more than one pro tempore member term beginning or
9601 expiring in the same calendar year. If a pro tempore member vacancy occurs, the board may
9602 submit the names of not fewer than three or more than five persons to the governor for
9603 appointment to fill the vacancy.

9604 (b) All vacancies occurring on the board for any cause shall be filled by the governor

9605 with the consent of the Senate pursuant to this section for the unexpired term of the vacating
9606 member.

9607 (c) The governor may at any time remove any member of the board for inefficiency,
9608 neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

9609 (d) A member of the board may not hold any other office in the government of the
9610 United States, this state or any other state, or of any county government or municipal
9611 corporation within a state. A member may not engage in any occupation or business
9612 inconsistent with the member's duties.

9613 (e) A majority of the board constitutes a quorum for the transaction of business,
9614 including the holding of hearings at any time or any location within or without the state, or for
9615 the purpose of exercising any duty or authority of the board. Action taken by a majority of the
9616 board regarding whether parole, pardon, commutation, termination of sentence, or remission of
9617 fines or forfeitures may be granted or restitution ordered in individual cases is deemed the
9618 action of the board. A majority vote of the five full-time members of the board is required for
9619 adoption of rules or policies of general applicability as provided by statute. However, a
9620 vacancy on the board does not impair the right of the remaining board members to exercise any
9621 duty or authority of the board as long as a majority of the board remains.

9622 (f) Any investigation, inquiry, or hearing that the board has authority to undertake or
9623 hold may be conducted by any board member or an examiner appointed by the board. When
9624 any of these actions are approved and confirmed by the board and filed in its office, they are
9625 considered to be the action of the board and have the same effect as if originally made by the
9626 board.

9627 (g) When a full-time board member is absent or in other extraordinary circumstances
9628 the chair may, as dictated by public interest and efficient administration of the board, assign a
9629 pro tempore member to act in the place of a full-time member. Pro tempore members shall
9630 receive a per diem rate of compensation as established by the Division of Finance and all actual
9631 and necessary expenses incurred in attending to official business.

9632 (h) The chair may request staff and administrative support as necessary from the
9633 Department of Corrections.

9634 (3) (a) Except as provided in Subsection (3)(b), the Commission on Criminal and
9635 Juvenile Justice shall:

9636 (i) recommend five applicants to the governor for a full-time member appointment to
9637 the Board of Pardons and Parole; and

9638 (ii) consider applicants' knowledge of the criminal justice system, state and federal
9639 criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

9640 (b) The procedures and requirements of Subsection (3)(a) do not apply if the governor
9641 appoints a sitting board member to a new term of office.

9642 (4) (a) The board shall appoint an individual to serve as its mental health adviser and
9643 may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77,
9644 Chapter 16a, Commitment and Treatment of [~~Mentally ill~~] Persons with a Mental Illness. The
9645 adviser shall prepare reports and recommendations to the board on all persons adjudicated as
9646 guilty [~~and mentally ill~~] with a mental illness, in accordance with Title 77, Chapter 16a.

9647 (b) The mental health adviser shall possess the qualifications necessary to carry out the
9648 duties imposed by the board and may not be employed by the Department of Corrections or the
9649 Utah State Hospital.

9650 (i) The Board of Pardons and Parole may review outside employment by the mental
9651 health advisor.

9652 (ii) The Board of Pardons and Parole shall develop rules governing employment with
9653 entities other than the board by the mental health advisor for the purpose of prohibiting a
9654 conflict of interest.

9655 (c) The mental health adviser shall:

9656 (i) act as liaison for the board with the Department of Human Services and local mental
9657 health authorities;

9658 (ii) educate the members of the board regarding the needs and special circumstances of
9659 [~~mentally ill~~] persons with a mental illness in the criminal justice system;

9660 (iii) in cooperation with the Department of Corrections, monitor the status of persons
9661 in the prison who have been found guilty [~~and mentally ill~~] with a mental illness;

9662 (iv) monitor the progress of other persons under the board's jurisdiction who [~~are~~
9663 ~~mentally ill~~] have a mental illness;

9664 (v) conduct hearings as necessary in the preparation of reports and recommendations;
9665 and

9666 (vi) perform other duties as assigned by the board.

9667 Section 181. Section **77-27-5.3** is amended to read:

9668 **77-27-5.3. Meritless and bad faith litigation.**

9669 (1) For purposes of this section:

9670 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9671 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9672 offense.

9673 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated
9674 for that crime or is being held in custody for trial or sentencing.

9675 (2) In any case filed in state or federal court in which a prisoner submits a claim that
9676 the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons
9677 and Parole and any county jail administrator may consider that finding in any early release
9678 decisions concerning the prisoner.

9679 Section 182. Section **77-27-10.5** is amended to read:

9680 **77-27-10.5. Special condition of parole -- Penalty.**

9681 (1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release
9682 the defendant on parole and as a condition of parole, the board may order the defendant to be
9683 prohibited from directly or indirectly engaging in any profit or benefit generating activity
9684 relating to the publication of facts or circumstances pertaining to the defendant's involvement
9685 in the criminal act for which the defendant is convicted.

9686 (2) The order may prohibit the defendant from contracting with any person, firm,
9687 corporation, partnership, association, or other legal entity with respect to the commission and
9688 reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article,
9689 tape recording, phonograph record, radio, or television presentations, live entertainment of any
9690 kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
9691 regarding the criminal conduct.

9692 (3) The board may order that the prohibition includes any event undertaken and
9693 experienced by the defendant while avoiding apprehension from the authorities or while facing
9694 criminal charges.

9695 (4) The board may order that any action taken by the defendant by way of execution of
9696 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9697 board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

9698 (5) Adult Probation and Parole shall notify the board of any alleged violation of the
9699 board's order under this section.

9700 (6) The violation of the board's order shall be considered a violation of parole.

9701 (7) For purposes of this section:

9702 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9703 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9704 offense; and

9705 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9706 representatives acting on the defendant's authority.

9707 Section 183. Section **77-33-5** is amended to read:

9708 **77-33-5. Rendition procedure inapplicable to person confined as insane or having**
9709 **a mental illness or under sentence of death.**

9710 This act does not apply to any person in this state confined as insane or [~~mentally ill~~] as
9711 having a mental illness or under sentence of death.

9712 Section 184. Section **77-38-302** is amended to read:

9713 **77-38-302. Definitions.**

9714 As used in this part:

9715 (1) "Conviction" means an adjudication by a federal or state court resulting from a trial
9716 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
9717 or not guilty but [~~mentally ill~~] having a mental illness regardless of whether the sentence was
9718 imposed or suspended.

9719 (2) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

9720 (3) "Memorabilia" means any tangible property of a person convicted of a first degree
9721 or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

9722 (4) "Profit" means any income or benefit over and above the fair market value of the
9723 property that is received upon the sale or transfer of memorabilia.

9724 Section 185. Section **78A-2-302** is amended to read:

9725 **78A-2-302. Impecunious litigants -- Affidavit.**

9726 (1) For purposes of Sections 78A-2-302 through 78A-2-309:

9727 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9728 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or

9729 offense.

9730 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated
9731 for that crime or is being held in custody for trial or sentencing.

9732 (2) As provided in this chapter, any person may institute, prosecute, defend, and appeal
9733 any cause in any court in this state without prepayment of fees and costs or security, by taking
9734 and subscribing, before any officer authorized to administer an oath, an affidavit of
9735 impecuniosity demonstrating financial inability to pay fees and costs or give security.

9736 (3) The affidavit shall contain complete information on the party's:

9737 (a) identity and residence;

9738 (b) amount of income, including government financial support, alimony, child support;

9739 (c) assets owned, including real and personal property;

9740 (d) business interests;

9741 (e) accounts receivable;

9742 (f) securities, checking and savings account balances;

9743 (g) debts; and

9744 (h) monthly expenses.

9745 (4) If the party is a prisoner, he shall also disclose the amount of money held in his
9746 prisoner trust account at the time the affidavit is executed as provided in Section 78A-2-305.

9747 (5) In addition to the financial disclosures, the affidavit shall state the following:

9748 I, A B, do solemnly swear or affirm that due to my poverty I am unable to bear the
9749 expenses of the action or legal proceedings which I am about to commence or the appeal which
9750 I am about to take, and that I believe I am entitled to the relief sought by the action, legal
9751 proceedings, or appeal.

9752 Section 186. Section **78A-6-103** is amended to read:

9753 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

9754 (1) Except as otherwise provided by law, the juvenile court has exclusive original
9755 jurisdiction in proceedings concerning:

9756 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
9757 person younger than 21 years of age who has violated any law or ordinance before becoming
9758 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection
9759 78A-7-106(2);

9760 (b) a person 21 years of age or older who has failed or refused to comply with an order
9761 of the juvenile court to pay a fine or restitution, if the order was imposed [~~prior to~~] before the
9762 person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance
9763 with existing orders;

9764 (c) a child who is an abused child, neglected child, or dependent child, as those terms
9765 are defined in Section 78A-6-105;

9766 (d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7,
9767 Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the
9768 juvenile court has entered an ex parte protective order and finds that:

9769 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
9770 parent of the child who is the object of the petition;

9771 (ii) the district court has a petition pending or an order related to custody or parent-time
9772 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,
9773 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the
9774 respondent are parties; and

9775 (iii) the best interests of the child will be better served in the district court;

9776 (e) appointment of a guardian of the person or other guardian of a minor who comes
9777 within the court's jurisdiction under other provisions of this section;

9778 (f) the emancipation of a minor in accordance with Part 8, Emancipation;

9779 (g) the termination of the legal parent-child relationship in accordance with Part 5,
9780 Termination of Parental Rights Act, including termination of residual parental rights and
9781 duties;

9782 (h) the treatment or commitment of a [~~mentally retarded~~] minor who has an intellectual
9783 disability;

9784 (i) a minor who is a habitual truant from school;

9785 (j) the judicial consent to the marriage of a child under age 16 upon a determination of
9786 voluntariness or where otherwise required by law, employment, or enlistment of a child when
9787 consent is required by law;

9788 (k) any parent or parents of a child committed to a secure youth corrections facility, to
9789 order, at the discretion of the court and on the recommendation of a secure facility, the parent
9790 or parents of a child committed to a secure facility for a custodial term, to undergo group

9791 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of
9792 that parent's or parents' child, or any other therapist the court may direct, for a period directed
9793 by the court as recommended by a secure facility;

9794 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

9795 (m) the treatment or commitment of a [~~mentally ill~~] child with a mental illness. The
9796 court may commit a child to the physical custody of a local mental health authority in
9797 accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7,
9798 Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but
9799 not directly to the Utah State Hospital;

9800 (n) the commitment of a child in accordance with Section 62A-15-301;

9801 (o) de novo review of final agency actions resulting from an informal adjudicative
9802 proceeding as provided in Section 63G-4-402; and

9803 (p) adoptions conducted in accordance with the procedures described in Title 78B,
9804 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order
9805 terminating the rights of a parent and finds that adoption is in the best interest of the child.

9806 (2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile
9807 court has exclusive jurisdiction over the following offenses committed by a child:

9808 (a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

9809 (b) Section 73-18-12, reckless operation; and

9810 (c) class B and C misdemeanors, infractions, or violations of ordinances that are part of
9811 a single criminal episode filed in a petition that contains an offense over which the court has
9812 jurisdiction.

9813 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is
9814 referred to it by the Division of Child and Family Services or by public or private agencies that
9815 contract with the division to provide services to that child where, despite earnest and persistent
9816 efforts by the division or agency, the child has demonstrated that the child:

9817 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
9818 authorities to the extent that the child's behavior or condition endangers the child's own welfare
9819 or the welfare of others; or

9820 (b) has run away from home.

9821 (4) This section does not restrict the right of access to the juvenile court by private

9822 agencies or other persons.

9823 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases
9824 arising under Section 78A-6-702.

9825 (6) The juvenile court has jurisdiction to make a finding of substantiated,
9826 unsubstantiated, or without merit, in accordance with Section 78A-6-323.

9827 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court
9828 pursuant to Subsection 78A-7-106(7).

9829 Section 187. Section **78A-6-117 (Superseded 07/01/11)** is amended to read:

9830 **78A-6-117 (Superseded 07/01/11). Adjudication of jurisdiction of juvenile court --**
9831 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
9832 **Obtaining DNA sample.**

9833 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
9834 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
9835 jurisdiction over the minor. However, in cases within the provisions of Subsection
9836 78A-6-103(1), findings of fact are not necessary.

9837 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
9838 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
9839 to the school superintendent of the district in which the minor resides or attends school. Notice
9840 shall be made to the district superintendent within three days of the adjudication and shall
9841 include:

9842 (i) the specific offenses for which the minor was adjudicated; and

9843 (ii) if available, if the victim:

9844 (A) resides in the same school district as the minor; or

9845 (B) attends the same school as the minor.

9846 (2) Upon adjudication the court may make the following dispositions by court order:

9847 (a) (i) The court may place the minor on probation or under protective supervision in
9848 the minor's own home and upon conditions determined by the court, including compensatory
9849 service as provided in Subsection (2)(m)(iii).

9850 (ii) The court may place the minor in state supervision with the probation department
9851 of the court, under the legal custody of:

9852 (A) the minor's parent or guardian;

9853 (B) the Division of Juvenile Justice Services; or

9854 (C) the Division of Child and Family Services.

9855 (iii) If the court orders probation or state supervision, the court shall direct that notice
9856 of its order be provided to designated persons in the local law enforcement agency and the
9857 school or transferee school, if applicable, that the minor attends. The designated persons may
9858 receive the information for purposes of the minor's supervision and student safety.

9859 (iv) Any employee of the local law enforcement agency and the school that the minor
9860 attends who discloses the court's order of probation is not:

9861 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
9862 provided in Section 63G-7-202; and

9863 (B) civilly or criminally liable except when the disclosure constitutes a knowing
9864 violation of Section 63G-2-801.

9865 (b) The court may place the minor in the legal custody of a relative or other suitable
9866 person, with or without probation or protective supervision, but the juvenile court may not
9867 assume the function of developing foster home services.

9868 (c) (i) The court may:

9869 (A) vest legal custody of the minor in the Division of Child and Family Services,
9870 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
9871 and

9872 (B) order the Department of Human Services to provide dispositional
9873 recommendations and services.

9874 (ii) For minors who may qualify for services from two or more divisions within the
9875 Department of Human Services, the court may vest legal custody with the department.

9876 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
9877 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
9878 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
9879 Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

9880 (B) [~~Prior to~~] Before the court entering an order to place a minor in the custody of the
9881 Division of Child and Family Services on grounds other than abuse or neglect, the court shall
9882 provide the division with notice of the hearing no later than five days before the time specified
9883 for the hearing so the division may attend the hearing.

9884 (C) [~~Prior to~~] Before committing a child to the custody of the Division of Child and
9885 Family Services, the court shall make a finding as to what reasonable efforts have been
9886 attempted to prevent the child's removal from the child's home.

9887 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
9888 secure confinement.

9889 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
9890 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
9891 Juvenile Justice Services.

9892 (e) The court may commit a minor, subject to the court retaining continuing
9893 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
9894 Services for observation and evaluation for a period not to exceed 45 days, which period may
9895 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
9896 Services.

9897 (f) (i) The court may commit a minor to a place of detention or an alternative to
9898 detention for a period not to exceed 30 days subject to the court retaining continuing
9899 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
9900 ordered by the court.

9901 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

9902 (A) an act which if committed by an adult would be a criminal offense; or

9903 (B) contempt of court under Section 78A-6-1101.

9904 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
9905 the Division of Child and Family Services or any other appropriate person in accordance with
9906 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
9907 Dependency Proceedings.

9908 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
9909 and also for work, if possible, if the person, agency, or association operating the facility has
9910 been approved or has otherwise complied with all applicable state and local laws. A minor
9911 placed in a forestry camp or similar facility may be required to work on fire prevention,
9912 forestation and reforestation, recreational works, forest roads, and on other works on or off the
9913 grounds of the facility and may be paid wages, subject to the approval of and under conditions
9914 set by the court.

9915 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
9916 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
9917 Section 78A-6-321 and impose fines in limited amounts.

9918 (ii) The court may also require a minor to reimburse an individual, entity, or
9919 governmental agency who offered and paid a reward to a person or persons for providing
9920 information resulting in a court adjudication that the minor is within the jurisdiction of the
9921 juvenile court due to the commission of a criminal offense.

9922 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
9923 court may order the minor to make restitution for costs expended by any governmental entity
9924 for the return.

9925 (j) The court may issue orders necessary for the collection of restitution and fines
9926 ordered by the court, including garnishments, wage withholdings, and executions.

9927 (k) (i) The court may through its probation department encourage the development of
9928 employment or work programs to enable minors to fulfill their obligations under Subsection
9929 (2)(i) and for other purposes considered desirable by the court.

9930 (ii) Consistent with the order of the court, the probation officer may permit a minor
9931 found to be within the jurisdiction of the court to participate in a program of work restitution or
9932 compensatory service in lieu of paying part or all of the fine imposed by the court.

9933 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
9934 addition to any other disposition authorized by this section:

9935 (A) restrain the minor from driving for periods of time the court considers necessary;
9936 and

9937 (B) take possession of the minor's driver license.

9938 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
9939 suspension of driving privileges for an offense under Section 78A-6-606 are governed only by
9940 Section 78A-6-606.

9941 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
9942 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
9943 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
9944 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
9945 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory

9946 completion of an approved substance abuse prevention or treatment program may be credited
9947 by the court as compensatory service hours.

9948 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
9949 78A-6-103 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
9950 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
9951 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
9952 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
9953 approved substance abuse prevention or treatment program may be credited by the court as
9954 compensatory service hours.

9955 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
9956 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
9957 order the minor to clean up graffiti created by the minor or any other person at a time and place
9958 within the jurisdiction of the court. Compensatory service required under this section may be
9959 performed in the presence and under the direct supervision of the minor's parent or legal
9960 guardian. The parent or legal guardian shall report completion of the order to the court. The
9961 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
9962 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
9963 court may also require the minor to perform other alternative forms of restitution or repair to
9964 the damaged property pursuant to Subsection 77-18-1(8).

9965 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
9966 less than eight hours.

9967 (B) For a second adjudication, the court may require the minor to clean up graffiti for
9968 not less than 16 hours.

9969 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
9970 less than 24 hours.

9971 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

9972 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

9973 (B) receive other special care.

9974 (ii) For purposes of receiving the examination, treatment, or care described in
9975 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

9976 (iii) In determining whether to order the examination, treatment, or care described in

9977 Subsection (2)(n)(i), the court shall consider:

9978 (A) the desires of the minor;

9979 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
9980 minor; and

9981 (C) whether the potential benefits of the examination, treatment, or care outweigh the
9982 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
9983 function impairment, or emotional or physical harm resulting from the compulsory nature of
9984 the examination, treatment, or care.

9985 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
9986 interest of the minor, and may appoint as guardian a public or private institution or agency in
9987 which legal custody of the minor is vested.

9988 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
9989 private agency or institution, the court shall give primary consideration to the welfare of the
9990 minor. When practicable, the court may take into consideration the religious preferences of the
9991 minor and of a child's parents.

9992 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
9993 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
9994 or any other person who has been made a party to the proceedings. Conditions may include:

9995 (A) parent-time by the parents or one parent;

9996 (B) restrictions on the minor's associates;

9997 (C) restrictions on the minor's occupation and other activities; and

9998 (D) requirements to be observed by the parents or custodian.

9999 (ii) A minor whose parents or guardians successfully complete a family or other
10000 counseling program may be credited by the court for detention, confinement, or probation time.

10001 (q) The court may order the child to be committed to the physical custody of a local
10002 mental health authority, in accordance with the procedures and requirements of Title 62A,
10003 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
10004 Mental Health.

10005 (r) (i) The court may make an order committing a minor within the court's jurisdiction
10006 to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual
10007 disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to

10008 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
10009 Disability.

10010 (ii) The court shall follow the procedure applicable in the district courts with respect to
10011 judicial commitments to the Utah State Developmental Center when ordering a commitment
10012 under Subsection (2)(r)(i).

10013 (s) The court may terminate all parental rights upon a finding of compliance with the
10014 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

10015 (t) The court may make any other reasonable orders for the best interest of the minor or
10016 as required for the protection of the public, except that a child may not be committed to jail or
10017 prison.

10018 (u) The court may combine the dispositions listed in this section if they are compatible.

10019 (v) Before depriving any parent of custody, the court shall give due consideration to the
10020 rights of parents concerning their child. The court may transfer custody of a minor to another
10021 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
10022 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

10023 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
10024 probation or placement of a minor with an individual or an agency shall include a date certain
10025 for a review of the case by the court. A new date shall be set upon each review.

10026 (x) In reviewing foster home placements, special attention shall be given to making
10027 adoptable children available for adoption without delay.

10028 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
10029 with an individual or relative of a child where the court has previously acquired jurisdiction as
10030 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
10031 order for child support on behalf of the child against the natural or adoptive parents of the
10032 child.

10033 (ii) Orders under Subsection (2)(y)(i):

10034 (A) shall remain in effect until the child reaches majority;

10035 (B) are not subject to review under Section 78A-6-118; and

10036 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

10037 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
10038 permanent orders of custody and guardianship do not expire with a termination of jurisdiction

10039 of the juvenile court.

10040 (3) In addition to the dispositions described in Subsection (2), when a minor comes
10041 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
10042 National Guard in lieu of other sanctions, provided:

10043 (a) the minor meets the current entrance qualifications for service in the National
10044 Guard as determined by a recruiter, whose determination is final;

10045 (b) the minor is not under the jurisdiction of the court for any act that:

10046 (i) would be a felony if committed by an adult;

10047 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

10048 (iii) was committed with a weapon; and

10049 (c) the court retains jurisdiction over the minor under conditions set by the court and
10050 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

10051 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
10052 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
10053 designated employees of the court or, if the minor is in the legal custody of the Division of
10054 Juvenile Justice Services, then by designated employees of the division under Subsection
10055 53-10-404(5)(b).

10056 (b) The responsible agency shall ensure that employees designated to collect the saliva
10057 DNA specimens receive appropriate training and that the specimens are obtained in accordance
10058 with accepted protocol.

10059 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
10060 Specimen Restricted Account created in Section 53-10-407.

10061 (d) Payment of the reimbursement is second in priority to payments the minor is
10062 ordered to make for restitution under this section and treatment under Section 78A-6-321.

10063 Section 188. Section **78A-6-117 (Effective 07/01/11)** is amended to read:

10064 **78A-6-117 (Effective 07/01/11). Adjudication of jurisdiction of juvenile court --**

10065 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
10066 **Obtaining DNA sample.**

10067 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
10068 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
10069 jurisdiction over the minor. However, in cases within the provisions of Subsection

10070 78A-6-103(1), findings of fact are not necessary.

10071 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
10072 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
10073 to the school superintendent of the district in which the minor resides or attends school. Notice
10074 shall be made to the district superintendent within three days of the adjudication and shall
10075 include:

10076 (i) the specific offenses for which the minor was adjudicated; and

10077 (ii) if available, if the victim:

10078 (A) resides in the same school district as the minor; or

10079 (B) attends the same school as the minor.

10080 (2) Upon adjudication the court may make the following dispositions by court order:

10081 (a) (i) The court may place the minor on probation or under protective supervision in
10082 the minor's own home and upon conditions determined by the court, including compensatory
10083 service as provided in Subsection (2)(m)(iii).

10084 (ii) The court may place the minor in state supervision with the probation department
10085 of the court, under the legal custody of:

10086 (A) the minor's parent or guardian;

10087 (B) the Division of Juvenile Justice Services; or

10088 (C) the Division of Child and Family Services.

10089 (iii) If the court orders probation or state supervision, the court shall direct that notice
10090 of its order be provided to designated persons in the local law enforcement agency and the
10091 school or transferee school, if applicable, that the minor attends. The designated persons may
10092 receive the information for purposes of the minor's supervision and student safety.

10093 (iv) Any employee of the local law enforcement agency and the school that the minor
10094 attends who discloses the court's order of probation is not:

10095 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
10096 provided in Section 63G-7-202; and

10097 (B) civilly or criminally liable except when the disclosure constitutes a knowing
10098 violation of Section 63G-2-801.

10099 (b) The court may place the minor in the legal custody of a relative or other suitable
10100 person, with or without probation or protective supervision, but the juvenile court may not

10101 assume the function of developing foster home services.

10102 (c) (i) The court may:

10103 (A) vest legal custody of the minor in the Division of Child and Family Services,
10104 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
10105 and

10106 (B) order the Department of Human Services to provide dispositional
10107 recommendations and services.

10108 (ii) For minors who may qualify for services from two or more divisions within the
10109 Department of Human Services, the court may vest legal custody with the department.

10110 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
10111 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
10112 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
10113 Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

10114 (B) Prior to the court entering an order to place a minor in the custody of the Division
10115 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
10116 the division with notice of the hearing no later than five days before the time specified for the
10117 hearing so the division may attend the hearing.

10118 (C) Prior to committing a child to the custody of the Division of Child and Family
10119 Services, the court shall make a finding as to what reasonable efforts have been attempted to
10120 prevent the child's removal from the child's home.

10121 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
10122 secure confinement.

10123 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
10124 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
10125 Juvenile Justice Services.

10126 (e) The court may commit a minor, subject to the court retaining continuing
10127 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
10128 Services for observation and evaluation for a period not to exceed 45 days, which period may
10129 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
10130 Services.

10131 (f) (i) The court may commit a minor to a place of detention or an alternative to

10132 detention for a period not to exceed 30 days subject to the court retaining continuing
10133 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
10134 ordered by the court.

10135 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

10136 (A) an act which if committed by an adult would be a criminal offense; or

10137 (B) contempt of court under Section 78A-6-1101.

10138 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
10139 the Division of Child and Family Services or any other appropriate person in accordance with
10140 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
10141 Dependency Proceedings.

10142 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
10143 and also for work, if possible, if the person, agency, or association operating the facility has
10144 been approved or has otherwise complied with all applicable state and local laws. A minor
10145 placed in a forestry camp or similar facility may be required to work on fire prevention,
10146 forestation and reforestation, recreational works, forest roads, and on other works on or off the
10147 grounds of the facility and may be paid wages, subject to the approval of and under conditions
10148 set by the court.

10149 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
10150 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
10151 Section 78A-6-321 and impose fines in limited amounts.

10152 (ii) The court may also require a minor to reimburse an individual, entity, or
10153 governmental agency who offered and paid a reward to a person or persons for providing
10154 information resulting in a court adjudication that the minor is within the jurisdiction of the
10155 juvenile court due to the commission of a criminal offense.

10156 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
10157 court may order the minor to make restitution for costs expended by any governmental entity
10158 for the return.

10159 (j) The court may issue orders necessary for the collection of restitution and fines
10160 ordered by the court, including garnishments, wage withholdings, and executions.

10161 (k) (i) The court may through its probation department encourage the development of
10162 employment or work programs to enable minors to fulfill their obligations under Subsection

10163 (2)(i) and for other purposes considered desirable by the court.

10164 (ii) Consistent with the order of the court, the probation officer may permit a minor
10165 found to be within the jurisdiction of the court to participate in a program of work restitution or
10166 compensatory service in lieu of paying part or all of the fine imposed by the court.

10167 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
10168 addition to any other disposition authorized by this section:

10169 (A) restrain the minor from driving for periods of time the court considers necessary;
10170 and

10171 (B) take possession of the minor's driver license.

10172 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the
10173 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by
10174 Section 78A-6-606.

10175 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
10176 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
10177 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
10178 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
10179 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
10180 completion of an approved substance abuse prevention or treatment program may be credited
10181 by the court as compensatory service hours.

10182 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
10183 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court
10184 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
10185 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
10186 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
10187 approved substance abuse prevention or treatment program may be credited by the court as
10188 compensatory service hours.

10189 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
10190 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
10191 order the minor to clean up graffiti created by the minor or any other person at a time and place
10192 within the jurisdiction of the court. Compensatory service required under this section may be
10193 performed in the presence and under the direct supervision of the minor's parent or legal

10194 guardian. The parent or legal guardian shall report completion of the order to the court. The
10195 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
10196 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
10197 court may also require the minor to perform other alternative forms of restitution or repair to
10198 the damaged property pursuant to Subsection 77-18-1(8).

10199 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
10200 less than eight hours.

10201 (B) For a second adjudication, the court may require the minor to clean up graffiti for
10202 not less than 16 hours.

10203 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
10204 less than 24 hours.

10205 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

10206 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

10207 (B) receive other special care.

10208 (ii) For purposes of receiving the examination, treatment, or care described in
10209 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

10210 (iii) In determining whether to order the examination, treatment, or care described in
10211 Subsection (2)(n)(i), the court shall consider:

10212 (A) the desires of the minor;

10213 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
10214 minor; and

10215 (C) whether the potential benefits of the examination, treatment, or care outweigh the
10216 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
10217 function impairment, or emotional or physical harm resulting from the compulsory nature of
10218 the examination, treatment, or care.

10219 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
10220 interest of the minor, and may appoint as guardian a public or private institution or agency in
10221 which legal custody of the minor is vested.

10222 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
10223 private agency or institution, the court shall give primary consideration to the welfare of the
10224 minor. When practicable, the court may take into consideration the religious preferences of the

10225 minor and of a child's parents.

10226 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
10227 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
10228 or any other person who has been made a party to the proceedings. Conditions may include:

10229 (A) parent-time by the parents or one parent;

10230 (B) restrictions on the minor's associates;

10231 (C) restrictions on the minor's occupation and other activities; and

10232 (D) requirements to be observed by the parents or custodian.

10233 (ii) A minor whose parents or guardians successfully complete a family or other
10234 counseling program may be credited by the court for detention, confinement, or probation time.

10235 (q) The court may order the child to be committed to the physical custody of a local
10236 mental health authority, in accordance with the procedures and requirements of Title 62A,
10237 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
10238 Mental Health.

10239 (r) (i) The court may make an order committing a minor within the court's jurisdiction
10240 to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual
10241 disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to
10242 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
10243 Disability.

10244 (ii) The court shall follow the procedure applicable in the district courts with respect to
10245 judicial commitments to the Utah State Developmental Center when ordering a commitment
10246 under Subsection (2)(r)(i).

10247 (s) The court may terminate all parental rights upon a finding of compliance with the
10248 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

10249 (t) The court may make any other reasonable orders for the best interest of the minor or
10250 as required for the protection of the public, except that a child may not be committed to jail or
10251 prison.

10252 (u) The court may combine the dispositions listed in this section if they are compatible.

10253 (v) Before depriving any parent of custody, the court shall give due consideration to the
10254 rights of parents concerning their child. The court may transfer custody of a minor to another
10255 person, agency, or institution in accordance with the requirements and procedures of Title 78A,

10256 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

10257 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
10258 probation or placement of a minor with an individual or an agency shall include a date certain
10259 for a review of the case by the court. A new date shall be set upon each review.

10260 (x) In reviewing foster home placements, special attention shall be given to making
10261 adoptable children available for adoption without delay.

10262 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
10263 with an individual or relative of a child where the court has previously acquired jurisdiction as
10264 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
10265 order for child support on behalf of the child against the natural or adoptive parents of the
10266 child.

10267 (ii) Orders under Subsection (2)(y)(i):

10268 (A) shall remain in effect until the child reaches majority;

10269 (B) are not subject to review under Section 78A-6-118; and

10270 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

10271 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
10272 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
10273 of the juvenile court.

10274 (3) In addition to the dispositions described in Subsection (2), when a minor comes
10275 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
10276 National Guard in lieu of other sanctions, provided:

10277 (a) the minor meets the current entrance qualifications for service in the National
10278 Guard as determined by a recruiter, whose determination is final;

10279 (b) the minor is not under the jurisdiction of the court for any act that:

10280 (i) would be a felony if committed by an adult;

10281 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

10282 (iii) was committed with a weapon; and

10283 (c) the court retains jurisdiction over the minor under conditions set by the court and
10284 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

10285 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
10286 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by

10287 designated employees of the court or, if the minor is in the legal custody of the Division of
10288 Juvenile Justice Services, then by designated employees of the division under Subsection
10289 53-10-404(5)(b).

10290 (b) The responsible agency shall ensure that employees designated to collect the saliva
10291 DNA specimens receive appropriate training and that the specimens are obtained in accordance
10292 with accepted protocol.

10293 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
10294 Specimen Restricted Account created in Section 53-10-407.

10295 (d) Payment of the reimbursement is second in priority to payments the minor is
10296 ordered to make for restitution under this section and treatment under Section 78A-6-321.

10297 Section 189. Section **78A-11-108** is amended to read:

10298 **78A-11-108. Involuntary disability retirement or removal of a judge.**

10299 (1) The commission shall recommend and issue an order for the removal or involuntary
10300 retirement of a judge of any court of this state, in accordance with the procedure outlined in this
10301 section, for a disability that seriously interferes with the performance of the judge's judicial
10302 duties and which is, or is likely to become, of a permanent character.

10303 (2) The commission shall order a medical examination and report.

10304 (3) The commission in recommending an order of involuntary retirement or removal of
10305 a judge for a disability, shall base it on the evaluation and recommendations submitted by one
10306 or more medical examiners or physicians, including an examination of essential statements
10307 submitted by either bar or judicial associations or committees certifying that:

10308 (a) the judge [~~is mentally or physically disabled~~] acquires a physical or mental
10309 disability and this disability seriously interferes with the performance of the judge's judicial
10310 duties; and

10311 (b) the judge's incapacity is likely to continue and be permanent and that the judge
10312 should be involuntarily retired or removed.

10313 (4) (a) The Supreme Court shall review the commission's proceedings as to both law
10314 and fact and may permit the introduction of additional evidence.

10315 (b) After its review, the Supreme Court shall issue its order implementing, rejecting, or
10316 modifying the commission's order.

10317 (5) Retirement or involuntary retirement as provided in this chapter shall be processed

10318 through the Utah State Retirement Office, and the judge retiring shall meet the requirements for
10319 retirement as specified in this chapter.

10320 (6) Upon an order for involuntary retirement, the judge shall retire with the same rights
10321 and privileges as if the judge retired pursuant to statute.

10322 Section 190. Section **78B-3-110** is amended to read:

10323 **78B-3-110. Defense to civil action for damages resulting from commission of**
10324 **crime.**

10325 (1) A person may not recover from the victim of a crime for personal injury or property
10326 damage if the person:

10327 (a) entered the property of the victim with criminal intent and the injury or damage
10328 occurred while the person was on the victim's property; or

10329 (b) committed a crime against the victim, during which the damage or injury occurred.

10330 (2) The provisions of Subsection (1) do not apply if the person can prove by clear and
10331 convincing evidence that:

10332 (a) [~~his~~] the person's actions did not constitute a felony; and

10333 (b) [~~his~~] the person's culpability was less than the person from whom recovery is
10334 sought.

10335 (3) Subsections (1) and (2) apply to any next-of-kin, heirs, or personal representatives
10336 of the person if the person [~~is disabled~~] acquires a disability or is killed.

10337 (4) Subsections (1), (2), and (3) do not apply if the person committing or attempting to
10338 commit the crime has clearly retreated from the criminal activity.

10339 (5) "Clearly retreated" means that the person committing the criminal act has fully,
10340 clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or
10341 activity.

10342 Section 191. **Effective date.**

10343 This bill takes effect on May 10, 2011, except that the amendments to Section
10344 78A-6-117 (Effective 07/01/11) take effect on July 1, 2011.