

HB0230S01 compared with HB0230

~~{deleted text}~~ shows text that was in HB0230 but was deleted in HB0230S01.

inserted text shows text that was not in HB0230 but was inserted into HB0230S01.

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Representative Paul Ray proposes the following substitute bill:

DISABILITY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

To the extent possible, this bill replaces outdated ~~{or derogatory}~~ terms relating to persons with a disability with ~~{current, non-derogatory}~~ updated terms.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

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"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 illness";
 - replaces the term "guilty of a lesser offense and mentally ill," with the term "guilty of a lesser offense with a mental illness"; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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23-19-38.3, as enacted by Laws of Utah 2010, Chapter 192
23-20-12, as last amended by Laws of Utah 1975, Chapter 60
24-1-7, as last amended by Laws of Utah 2004, Chapter 296
26-1-18, as last amended by Laws of Utah 1991, Chapter 112
26-2-27, as last amended by Laws of Utah 1998, Chapter 263
26-4-7, as last amended by Laws of Utah 2001, Chapter 278
26-10-1, as last amended by Laws of Utah 2001, Chapter 73
26-10-2, as enacted by Laws of Utah 1981, Chapter 126
26-10-6, as last amended by Laws of Utah 2010, Chapter 286
26-18-3, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
26-18-3.1, as enacted by Laws of Utah 1994, Chapter 314
26-18-501, as enacted by Laws of Utah 2004, Chapter 215
26-19-13.5, as last amended by Laws of Utah 2004, Chapter 72
26-21-3, as last amended by Laws of Utah 2008, Chapter 74
26-21-9.5, as last amended by Laws of Utah 2009, Chapter 267
26-21-13.5, as last amended by Laws of Utah 1993, Chapter 201
26-35a-102, as enacted by Laws of Utah 2004, Chapter 284
26-35a-103, as last amended by Laws of Utah 2009, Chapter 83
26-35a-108, as enacted by Laws of Utah 2005, Chapter 31
31A-1-301, as last amended by Laws of Utah 2010, Chapter 10
31A-22-611, as last amended by Laws of Utah 2006, Chapter 188
31A-22-614, as last amended by Laws of Utah 2001, Chapter 116
31A-22-625, as last amended by Laws of Utah 2010, Chapters 10 and 68
31A-22-802, as last amended by Laws of Utah 2004, Chapter 90
31A-23a-114, as renumbered and amended by Laws of Utah 2003, Chapter 298
31A-26-215, as enacted by Laws of Utah 2001, Chapter 116
31A-36-111, as last amended by Laws of Utah 2009, Chapter 355
34-38-14, as last amended by Laws of Utah 2010, Chapter 284
34-41-106, as last amended by Laws of Utah 1997, Chapter 375
34A-2-107, as last amended by Laws of Utah 2010, Chapter 286
34A-2-413, as last amended by Laws of Utah 2010, Chapter 59

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34A-2-703, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-2-902, as last amended by Laws of Utah 2008, Chapter 3
34A-2-903, as renumbered and amended by Laws of Utah 2005, Chapter 243
34A-3-104, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-3-107, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-4-101, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-4-102, as renumbered and amended by Laws of Utah 1997, Chapter 375
34A-8a-102, as renumbered and amended by Laws of Utah 2009, Chapter 158
34A-8a-301, as renumbered and amended by Laws of Utah 2009, Chapter 158
34A-8a-302, as renumbered and amended by Laws of Utah 2009, Chapter 158
34A-8a-303, as renumbered and amended by Laws of Utah 2009, Chapter 158
39-1-59, as last amended by Laws of Utah 1988, Chapter 210
41-6a-1011, as renumbered and amended by Laws of Utah 2005, Chapter 2
41-22-2, as last amended by Laws of Utah 2009, Chapters 289 and 311
49-11-403, as last amended by Laws of Utah 2010, Chapters 257, 266, and 321
49-11-404, as last amended by Laws of Utah 2010, Chapters 266 and 321
49-12-601, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-14-502, as last amended by Laws of Utah 2003, Chapter 240
49-14-504, as last amended by Laws of Utah 2009, Chapter 224
49-15-502, as last amended by Laws of Utah 2003, Chapter 240
49-15-504, as last amended by Laws of Utah 2009, Chapter 224
49-16-201, as last amended by Laws of Utah 2010, Chapter 266
49-16-502, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-16-504, as last amended by Laws of Utah 2003, Chapter 240
49-16-602, as last amended by Laws of Utah 2007, Chapter 130
49-21-102, as last amended by Laws of Utah 2007, Chapter 130
49-21-401, as last amended by Laws of Utah 2010, Chapter 321
49-21-403, as last amended by Laws of Utah 2010, Chapters 266 and 321
49-22-402, as enacted by Laws of Utah 2010, Chapter 266
53-3-807, as last amended by Laws of Utah 2009, Chapter 315
53-10-208.1, as last amended by Laws of Utah 2009, Chapter 356

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53A-1a-704, as last amended by Laws of Utah 2009, Chapter 197
53A-3-204, as enacted by Laws of Utah 1988, Chapter 2
53A-9-103, as last amended by Laws of Utah 2001, Chapters 73 and 86
53A-15-205, as last amended by Laws of Utah 2002, Chapter 210
53A-17a-112, as last amended by Laws of Utah 2010, Chapter 3
53A-17a-127, as last amended by Laws of Utah 2010, Chapter 305
53B-23-101, as enacted by Laws of Utah 2006, Chapter 301
54-1-1.6, as last amended by Laws of Utah 2002, Chapter 176
57-21-5, as last amended by Laws of Utah 1993, Chapter 114
58-15-2, as last amended by Laws of Utah 1993, Chapter 297
58-15-3, as repealed and reenacted by Laws of Utah 1993, Chapter 297
58-17b-503, as last amended by Laws of Utah 2005, Chapter 160
58-17b-701, as last amended by Laws of Utah 2008, Chapter 382
58-26a-307, as last amended by Laws of Utah 2009, Chapter 183
58-31b-102, as last amended by Laws of Utah 2008, Chapters 214 and 382
58-31b-401, as last amended by Laws of Utah 2008, Chapters 214 and 382
58-60-114, as last amended by Laws of Utah 2009, Chapter 356
58-60-509, as last amended by Laws of Utah 2009, Chapter 356
58-61-602, as last amended by Laws of Utah 2009, Chapter 356
58-67-601, as last amended by Laws of Utah 2008, Chapter 382
58-68-601, as last amended by Laws of Utah 2008, Chapter 382
58-69-601, as last amended by Laws of Utah 2008, Chapter 382
58-71-601, as last amended by Laws of Utah 2008, Chapter 382
58-73-401, as last amended by Laws of Utah 2010, Chapter 324
59-2-1101, as last amended by Laws of Utah 2007, Chapter 329
59-2-1104, as last amended by Laws of Utah 2010, Chapter 71
59-2-1105, as last amended by Laws of Utah 2008, Chapters 104 and 382
59-2-1109, as last amended by Laws of Utah 2009, Chapter 72
59-7-602, as enacted by Laws of Utah 1993, Chapter 169
59-10-1011, as renumbered and amended by Laws of Utah 2006, Chapter 223
62A-1-108.5, as last amended by Laws of Utah 2008, Chapter 382

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62A-2-101, as last amended by Laws of Utah 2009, Chapter 75
62A-2-120, as last amended by Laws of Utah 2010, Chapter 365
62A-2-122, as last amended by Laws of Utah 2009, Chapter 75
62A-4a-1010, as last amended by Laws of Utah 2008, Chapters 3 and 299
62A-5-101, as last amended by Laws of Utah 2009, Chapter 75
62A-5-103, as last amended by Laws of Utah 2008, Chapter 382
62A-5-104, as last amended by Laws of Utah 2009, Chapter 75
62A-5-110, as last amended by Laws of Utah 1998, Chapter 145
62A-5-201, as last amended by Laws of Utah 2010, Chapter 42
62A-5-206, as last amended by Laws of Utah 1996, Chapter 79
62A-5-207, as last amended by Laws of Utah 1992, Chapter 104
62A-5-302, as last amended by Laws of Utah 2004, Chapter 114
62A-5-304, as last amended by Laws of Utah 1991, Chapter 207
62A-5-305, as last amended by Laws of Utah 1991, Chapter 207
62A-5-308, as last amended by Laws of Utah 1993, Chapter 132
62A-5-309, as last amended by Laws of Utah 2004, Chapter 114
62A-5-310, as enacted by Laws of Utah 1988, Chapter 1
62A-5-311, as last amended by Laws of Utah 2004, Chapter 114
62A-5-312, as last amended by Laws of Utah 2004, Chapter 114
62A-5-313, as last amended by Laws of Utah 2008, Chapter 382
62A-5-316, as enacted by Laws of Utah 1988, Chapter 1
62A-5-317, as last amended by Laws of Utah 2004, Chapter 114
62A-5-318, as enacted by Laws of Utah 1993, Chapter 132
62A-6-101, as last amended by Laws of Utah 2005, Chapter 254
62A-11-111, as last amended by Laws of Utah 1994, Chapter 12
62A-15-605, as last amended by Laws of Utah 2010, Chapter 286
62A-15-608, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8
62A-15-610, as last amended by Laws of Utah 2003, Chapter 195
62A-15-616, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

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62A-15-619, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

62A-15-629, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

62A-15-631, as last amended by Laws of Utah 2003, Chapter 303

62A-15-632, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

62A-15-644, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

62A-15-706, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

62A-15-902, as last amended by Laws of Utah 2010, Chapter 218

63M-9-103, as renumbered and amended by Laws of Utah 2008, Chapter 382

64-9b-1, as last amended by Laws of Utah 1998, Chapter 363

67-19-27, as last amended by Laws of Utah 2009, Chapter 344

68-3-12.5, as enacted by Laws of Utah 2010, Chapter 254

71-10-1, as last amended by Laws of Utah 2007, Chapter 329

71-10-2, as last amended by Laws of Utah 2000, Chapter 134

71-11-2, as last amended by Laws of Utah 2007, Chapter 173

72-10-601, as last amended by Laws of Utah 2007, Chapter 329

75-2-801, as repealed and reenacted by Laws of Utah 1998, Chapter 39

75-5-303, as last amended by Laws of Utah 1988, Chapter 104

75-5-316, as last amended by Laws of Utah 2001, Chapter 73

75-5-408, as enacted by Laws of Utah 1975, Chapter 150

75-5-425, as last amended by Laws of Utah 1977, Chapter 194

75-5-501, as last amended by Laws of Utah 2003, Chapter 241

76-3-203.5, as last amended by Laws of Utah 2010, Chapter 334

76-3-406, as last amended by Laws of Utah 2007, Chapter 339

76-5-109, as last amended by Laws of Utah 2008, Chapter 45

76-5-110, as last amended by Laws of Utah 2009, Chapter 219

77-13-1, as last amended by Laws of Utah 2007, Chapter 306

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77-16a-101, as last amended by Laws of Utah 1994, Chapter 13
77-16a-102, as last amended by Laws of Utah 2009, Chapter 206
77-16a-103, as last amended by Laws of Utah 2002, Chapter 61
77-16a-104, as last amended by Laws of Utah 2003, Chapter 206
77-16a-201, as last amended by Laws of Utah 2002, Chapter 61
77-16a-202, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
77-16a-203, as last amended by Laws of Utah 2005, Chapter 61
77-16a-204, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
77-16a-205, as enacted by Laws of Utah 1992, Chapter 171
77-16a-302, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
77-16a-304, as last amended by Laws of Utah 2005, Chapter 61
77-16a-306, as enacted by Laws of Utah 1992, Chapter 171
77-18-1, as last amended by Laws of Utah 2009, Chapter 81
77-18-1.1, as last amended by Laws of Utah 2009, Chapter 337
77-18-8.3, as enacted by Laws of Utah 1996, Chapter 210
77-18-8.5, as enacted by Laws of Utah 1996, Chapter 210
77-27-2, as last amended by Laws of Utah 2010, Chapter 110
77-27-5.3, as enacted by Laws of Utah 1996, Chapter 161
77-27-10.5, as last amended by Laws of Utah 1997, Chapter 10
77-33-5, as enacted by Laws of Utah 1980, Chapter 15
77-38-302, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 3
78A-2-302, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-103, as last amended by Laws of Utah 2009, Chapter 146
78A-6-117 (Superseded 07/01/11), as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-117 (Effective 07/01/11), as last amended by Laws of Utah 2010, Chapter 276
78A-11-108, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-3-110, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

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

9-4-801. Creation.

(1) There is created the Homeless Coordinating Committee.

(2) (a) The committee shall consist of the state planning coordinator, the state superintendent of public instruction, the chair of the board of trustees of the Utah Housing Corporation, and the executive directors of the Department of Human Services, the Department of Corrections, the Department of Community and Culture, the Department of Workforce Services, and the Department of Health, or their designees.

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The committee may:

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

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

(4) (a) The committee may not expend, except as provided in Subsection (4)(b), an

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amount equal to the greater of \$50,000 or 20% of the amount donated to the Pamela Atkinson Homeless Account during fiscal year 1988-89.

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

(5) The committee shall make an annual report to the Economic Development and Human Resources Appropriations Subcommittee regarding the programs and services funded by contributions to the Pamela Atkinson Homeless Account.

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

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

9-4-903. Definitions.

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

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

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

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

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

(5) "Financial assistance" includes:

- (a) a loan, whether interest or noninterest bearing, secured or unsecured;
- (b) a loan that converts to a grant upon the occurrence of specified conditions;
- (c) a development loan;
- (d) a grant;
- (e) an award;

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- (f) a subsidy;
 - (g) a guarantee;
 - (h) a warranty;
 - (i) a lease;
 - (j) a payment on behalf of a borrower of an amount usually paid by a borrower, including a down payment;
 - (k) any other form of financial assistance that helps provide affordable housing for low and moderate income persons; or
 - (l) any combination of the foregoing.
- (6) "Housing development" means a residential housing project, which includes residential housing for low and moderate income persons.
- (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, residential housing to low and moderate income persons, including a local public body, a nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability company, a joint venture, a subsidiary of the corporation, or any subsidiary of the subsidiary, a cooperative, a mutual housing organization, or any other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.
- (8) "Interest rate contract" means interest rate exchange contracts, interest rate floor contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution or policy adopted or approved by the trustees.
- (9) "Local public body" means the state, any municipality, county, district, or other subdivision or instrumentality of the state, including redevelopment agencies and housing authorities created under Part 6, Housing Authorities.
- (10) "Low and moderate income persons" means persons, irrespective of race, religion, creed, national origin, or sex, as determined by the corporation to require such assistance as is made available by this part on account of insufficient personal or family income taking into consideration factors, including:
- (a) the amount of income that persons and families have available for housing needs;
 - (b) the size of family;

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- (c) whether or not a person is a single head of household;
- (d) the cost and condition of residential housing available; and
- (e) the ability of persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing.

~~[(13)]~~ (11) "Mortgage" means a mortgage, deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property (the property being held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term for repayment of the mortgage loan secured by the mortgage) improved or to be improved by residential housing, creating a lien which may be first priority or subordinate.

~~[(11)]~~ (12) "Mortgage lender" means any bank, trust company, savings and loan association, credit union, mortgage banker, or other financial institution authorized to transact business in the state, any local public body, or any other entity, profit or nonprofit, that makes mortgage loans.

~~[(12)]~~ (13) "Mortgage loan" means a loan secured by a mortgage, which loan may bear interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of which are used for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons, including low and moderate income persons who:

- (a) are first-time homebuyers~~[-];~~
- (b) are single heads of household~~[-];~~
- (c) are elderly~~[-];~~
- (d) are homeless~~[-, or disabled.];~~ or
- (e) have a disability.

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

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

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agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

19-6-102. Definitions.

As used in this part:

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

(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at

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which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

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

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

- (i) receives waste for recycling;
- (ii) receives waste to be used as fuel, in compliance with federal and state requirements; or
- (iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Construction waste or demolition waste":

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

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

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

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

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

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

(9) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or

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infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(10) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for ~~[the mentally retarded]~~ people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

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

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

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

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

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

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

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

(b) a closure plan;

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(c) a modification plan; or

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

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

(18) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

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

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

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

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

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

(v) cement kiln dust.

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

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

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

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

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

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

(1) The state central committee of a political party, for candidates for United States senator, United States representative, governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for legislative candidates whose legislative districts encompass more than one county, and the county central committee of a political party, for all other party candidates seeking an office elected at a regular general election, may certify the name of another candidate to the appropriate election officer if:

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

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

(ii) one or both:

(A) dies;

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

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

or

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

(i) dies;

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

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

or

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

(2) If no more than two candidates from a political party have filed a declaration of candidacy for an office elected at a regular general election and one resigns to become the party candidate for another position, the state central committee of that political party, for candidates for governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for

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legislative candidates whose legislative districts encompass more than one county, and the county central committee of that political party, for all other party candidates, may certify the name of another candidate to the appropriate election officer.

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

(4) A replacement candidate may not be certified for an election during the period beginning on the day after the date of the voter registration deadline and continuing through the date of the election.

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

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

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

(2) The person providing assistance may not be:

- (a) the voter's employer;
- (b) an agent of the employer;
- (c) an officer or agent of the voter's union; or
- (d) a candidate.

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

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

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

20A-3-403. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

(5) "Overseas citizen voter" means:

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

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

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

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

20A-3-406. Absentee ballots for military personnel and citizens living overseas --

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Federal postcard applications for ballot.

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

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

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

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

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

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

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

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

(iii) the date the ballot was mailed.

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

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

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

(4) (a) A federal postcard application issued under the authority of any Act of Congress

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or federal regulation is acceptable, when properly executed, as an application for a ballot under this chapter.

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

(5) The county clerk shall retain the application for use at the time the ballot is received from the military voter or overseas citizen voter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(3) The ballot is not valid unless:

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

(ii) the voter has signed the mailing affidavit on the back of the ballot envelope and the ballot is received in the office of the election officer before noon on the day of the official canvass following the election.

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

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

Signature of

Voter _____

Date _____

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

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

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

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

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

(b) The election judges shall:

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

(ii) unless the ballot is a ~~disabled~~ ballot of a military or overseas citizen ~~voter's~~

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~~ballot]~~ with a disability, compare the signature of the military or overseas citizen voter on the application with the signature on the registration and voting certificate.

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

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

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

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

(i) disallow the registration; and

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

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

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

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

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

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

(b) The election judges shall:

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

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

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

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

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

(i) disallow the vote; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) a provision requiring a designated party officer to serve as liaison with the

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lieutenant governor on all matters relating to the political party's relationship with the state;

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

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

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

(b) a procedure for selecting party officers that allows active participation by party members;

(c) a procedure for selecting party candidates at the federal, state, and county levels that allows active participation by party members;

(d) (i) a procedure for selecting electors who are pledged to cast their votes in the electoral college for the party's candidates for President and Vice President of the United States; and

(ii) a procedure for filling vacancies in the office of presidential elector because of death, refusal to act, failure to attend, ineligibility, or any other cause;

(e) a procedure for filling vacancies in the office of representative or senator because of death, resignation, or ineligibility;

(f) a provision requiring the governor and lieutenant governor to run as a joint ticket;

(g) a procedure for replacing party candidates who die, [~~become disabled~~] acquire a disability, or are disqualified before a primary or regular general election;

(h) provisions governing the deposit and expenditure of party funds, and governing the accounting for, reporting, and audit of party financial transactions;

(i) provisions governing access to party records;

(j) a procedure for amending the constitution or bylaws that allows active participation by party members or their representatives;

(k) a process for resolving grievances against the political party; and

(l) if desired by the political party, a process for consulting with, and obtaining the opinion of, the political party's Utah Senate and Utah House members about:

(i) the performance of the two United States Senators from Utah, including specifically:

(A) their views and actions regarding the defense of state's rights and federalism; and

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(B) their performance in representing Utah's interests;

(ii) the members' opinion about, or rating of, and support or opposition to the policy positions of any candidates for United States Senate from Utah, including incumbents, including specifically:

(A) their views and actions regarding the defense of state's rights and federalism; and

(B) their performance in representing Utah's interests; and

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

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

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

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

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

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

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

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

(i) transporting wildlife;

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

(iii) transferring a certificate of registration to harvest brine shrimp and brine shrimp eggs to another person, if the certificate is transferred in connection with the sale or transfer of

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the brine shrimp harvest operation or the harvesting equipment, subject to the restrictions referred to under Subsection (2)(c).

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

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

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

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

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

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

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

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

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

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

(a) (i) the person resides in:

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

(B) the state hospital;

(C) a veteran's hospital;

(D) a veteran's nursing home;

(E) a mental health center;

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

(G) a group home licensed by the Department of Human Services and operated under

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contract with the Division of Services for People with Disabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A resident who is terminally ill, and has less than five years to live, may receive a

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free license to fish:

- (a) upon furnishing verification from a physician; and
- (b) if [he] the resident qualifies for assistance under any low income public assistance

program administered by a state agency.

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

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

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

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

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

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

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

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

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

(a) paraplegia; or

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

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

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

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

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forfeiture regarding the property.

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

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

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

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

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

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

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

(i) the bond tendered is inadequate;

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

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

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

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

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

(c) The seizing agency shall have in place written policy for the identification, tracking,

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management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of forfeited property to any employee of the seizing agency.

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

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

(a) the owner had a possessory interest in the property at the time of seizure;
(b) continued possession by the agency or the state pending the final disposition of the forfeiture proceedings will cause substantial hardship to the owner, such as:

- (i) preventing the functioning of a legitimate business;
- (ii) preventing any individual from working;
- (iii) preventing any minor child or student from attending school;
- (iv) preventing or hindering any person from receiving necessary medical care;
- (v) hindering the care of:

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

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

(C) a dependent adult with a disability;

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

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

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

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

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

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

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

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

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

(11) The court shall render a decision on a motion for hardship filed under this section not later than 20 days after the date of filing, or 10 days after service upon the prosecuting attorney or seizing agency, whichever is earlier, unless this period is extended by the parties or by the court for good cause shown.

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

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

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

(a) contraband;

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

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

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

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

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

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

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

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

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

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

26-1-18. Authority of department generally.

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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registrars are alerted to the fact the registered birth certificate is that of a missing person.

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

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

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

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

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

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

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

26-4-7. Custody by medical examiner.

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

(1) by violence, gunshot, suicide, or accident unless the accident is a highway accident. If the death was from a highway accident, custody shall only be assumed if an autopsy is required or permitted under the provisions of Section 26-4-13 or if requested by the law enforcement agency with jurisdiction over the highway accident;

(2) sudden death while in apparent good health;

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

(4) under suspicious or unusual circumstances;

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- (5) resulting from poisoning or overdose of drugs;
- (6) resulting from diseases that may constitute a threat to the public health;
- (7) resulting from disease, injury, toxic effect, or unusual exertion incurred within the scope of the decedent's employment;
- (8) due to sudden infant death syndrome;
- (9) resulting while the decedent was in prison, jail, police custody, the state hospital, or in a detention or medical facility operated for the treatment of ~~[the mentally ill,]~~ persons with a mental illness, persons who are emotionally disturbed, or delinquent persons;
- (10) associated with diagnostic or therapeutic procedures; or
- (11) described in this section when request is made to assume custody by a county or district attorney or law enforcement agency in connection with a potential homicide investigation or prosecution.

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

26-10-1. Definitions.

As used in this chapter:

- (1) "Maternal and child health services" means:
 - (a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this section shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;
 - (b) the development, strengthening, and improvement of standards and techniques relating to the services and care;
 - (c) the training of personnel engaged in the provision, development, strengthening, or improvement of the services and care; and
 - (d) necessary administrative services connected with Subsections (1)(a), (b), and (c).
- (2) ~~["Crippled children's services"]~~ "Services for children with a disability" means:
 - (a) the early location of ~~[crippled]~~ children with a disability, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn child will not be used for screening, but rather will be utilized only when there are

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medical or genetic indications that warrant diagnosis;

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

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

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

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

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

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

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

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

26-10-6. Testing of newborn infants.

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

(a) phenylketonuria (PKU);

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

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

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

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

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

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

- (a) materials supplied by the department to conduct tests required under Subsection (1);
- (b) tests required under Subsection (1) conducted by the department;
- (c) laboratory analyses by the department of tests conducted under Subsection (1); and
- (d) the administrative cost of follow-up contacts with the parents or guardians of tested

infants.

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

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

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

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

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

(b) The committee shall advise the department on:

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

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

- (i) one representative of the health insurance industry;
- (ii) one pediatrician;
- (iii) one family practitioner;
- (iv) one ear, nose, and throat specialist nominated by the Utah Medical Association;
- (v) two audiologists nominated by the Utah Speech-Language-Hearing Association;
- (vi) one representative of hospital neonatal nurseries;
- (vii) one representative of the Early Intervention Baby Watch Program administered by the department;
- (viii) one public health nurse;
- (ix) one consumer; and

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(x) the executive director or his designee.

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

(i) for those members who have been appointed to complete an unexpired term; and

(ii) as necessary to ensure that as nearly as possible the terms of half the appointments expire every two years.

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

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

(g) The committee shall meet at least quarterly.

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

(i) Section 63A-3-106;

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

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

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

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

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

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

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

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

(i) the standards used by the department for determining eligibility for Medicaid

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services;

- (ii) the services and benefits to be covered by the Medicaid program; and
- (iii) reimbursement methodologies for providers under the Medicaid program.

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

- (i) implements a change in the Medicaid State Plan;
- (ii) initiates a new Medicaid waiver;
- (iii) initiates an amendment to an existing Medicaid waiver;
- (iv) applies for an extension of an application for a waiver or an existing Medicaid

waiver; or

- (v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Health and Human Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

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(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) (a) The Department of Human Services shall report to the Legislative Health and Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance with Subsection (4)(b).

(b) The report required by Subsection (4)(a) shall include:

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

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

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

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

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

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

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

(b) recovery of overpayments; and

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

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

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

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

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

(9) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

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

(i) the federal government must:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) in a geographic area;
- (ii) for a defined range of primary care services; and
- (iii) for a predetermined total contracted amount; and

(b) by February 1, 2011, report to the Health and Human Services Appropriations Subcommittee on the response to the request for information under Subsection (12)(a).

(13) (a) By December 31, 2010, the department shall:

(i) determine the feasibility of implementing a three year patient-centered medical home demonstration project in an area of the state using existing budget funds; and

(ii) report the department's findings and recommendations under Subsection (13)(a)(i) to the Health and Human Services Appropriations Subcommittee.

(b) If the department determines that the medical home demonstration project described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations Subcommittee recommends that the demonstration project be implemented, the department shall:

- (i) implement the demonstration project; and
- (ii) by December 1, 2012, make recommendations to the Health and Human Services Appropriations Subcommittee regarding the:

- (A) continuation of the demonstration project;
- (B) expansion of the demonstration project to other areas of the state; and
- (C) cost savings incurred by the implementation of the demonstration project.

(14) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (14)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

Section 26. Section **26-18-3.1** is amended to read:

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26-18-3.1. Medicaid expansion.

(1) The purpose of this section is to expand the coverage of the Medicaid program to persons who are in categories traditionally not served by that program.

(2) Within appropriations from the Legislature, the department may amend the state plan for medical assistance to provide for eligibility for Medicaid:

(a) on or after July 1, 1994, for children 12 to 17 years old who live in households below the federal poverty income guideline; and

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

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

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

(i) are newly established or marginally profitable;

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

(iii) employ predominantly low wage workers; and

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

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

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

26-18-501. Definitions.

As used in this part:

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

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

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

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

(i) skilled nursing homes;

(ii) intermediate care facilities; and

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

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

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

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

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

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

26-19-13.5. Estate and trust recovery.

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

(a) surviving spouse; or

(b) child:

(i) younger than 21 years of age; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) one hospital administrator;

(c) one hospital trustee;

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

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

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

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

(h) one professional in the field of [~~mental retardation~~] intellectual disabilities not

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affiliated with a nursing care facility;

- (i) one licensed architect or engineer with expertise in health care facilities;
- (j) two representatives of assisted living facilities licensed under this chapter;
- (k) two consumers, one of whom has an interest in or expertise in geriatric care; and
- (l) one representative from either a home health care provider or a hospice provider.

(2) (a) Except as required by Subsection (2)(b), members shall be appointed for a term of four years.

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

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

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

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

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

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

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

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

(1) For purposes of this section:

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

- (i) is not a covered health care facility;
- (ii) is not a licensed business within the state; and
- (iii) is hiring an individual to provide services to an elderly ~~[or disabled]~~ person or a person with a disability in the person's home ~~[of the elderly or disabled person]~~.

(b) "Covered health care facility" means:

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- (i) home health care agencies;
- (ii) hospices;
- (iii) nursing care facilities;
- (iv) assisted-living facilities;
- (v) small health care facilities; and
- (vi) end stage renal disease facilities.

(c) "Covered person" includes:

(i) the following people who provide direct patient care:

- (A) employees;
- (B) volunteers; and
- (C) people under contract with the covered health care facility; and

(ii) for residential settings, any individual residing in the home where the assisted living or small health care program is to be licensed who:

(A) is 18 years of age or older; or

(B) is a child between the age of 12 and 17 years of age[; ~~however, the identifying information required for a child between the age of 12 and 17 does not include fingerprints~~].

(2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered health care facility at the time of initial application for a license and license renewal shall:

(a) submit the name and other identifying information of each covered person at the covered facility who:

- (i) provides direct care to a patient; and
- (ii) has been the subject of a criminal background check within the preceding

three-year period by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which, except as provided in Subsection (3)(c), may include fingerprints, of each covered person at the covered facility who has not been the subject of a criminal background check in accordance with Subsection (2)(a)(ii).

(3) (a) The department shall forward the information received under Subsection (2)(b) or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of Public Safety for processing to determine whether the individual has been convicted of any

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crime.

(b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division. The individual or licensee is responsible for the cost of the fingerprinting and national criminal history check.

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

(4) The department may determine whether:

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

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

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

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

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

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(5) (a) The department shall:

(i) designate persons within the department to access:

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

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

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

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

(ii) adopt measures to:

(A) protect the security of the Licensing Information System, the court records, and the database; and

(B) strictly limit access to the Licensing Information System, the court records, and the database to those designated under Subsection (5)(a)(i).

(b) Those designated under Subsection (5)(a)(i) shall receive training from the Department of Human Services with respect to:

(i) accessing the Licensing Information System, the court records, and the database;

(ii) maintaining strict security; and

(iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(c) Those designated under Subsection (5)(a)(i):

(i) are the only ones in the department with the authority to access the Licensing Information System, the court records, and database; and

(ii) may only access the Licensing Information System, the court records, and the database for the purpose of licensing and in accordance with the provisions of Subsection (4).

(6) (a) Within 10 days of initially hiring a covered individual, a covered health care facility shall submit the covered individual's information to the department in accordance with Subsection (2).

(b) (i) [~~Prior to~~ Before, or within 10 days of initially hiring an individual to provide care to an elderly [~~adult~~ person] or a [~~disabled person~~ person with a disability] in the home of the [~~elderly adult or disabled~~] person, a covered employer may submit the employed individual's information to the department.

(ii) The department shall:

(A) in accordance with Subsections (4) and (6)(c) [~~of this section~~], and Subsection

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62A-3-311.1[(4)] (2)(b), determine whether the individual has a substantiated finding of abuse, neglect, or exploitation of a minor or an elderly ~~[adult]~~ person; and

(B) in accordance with Subsection (9), inform the covered employer of the department's findings.

(c) A covered employer:

(i) must certify to the department that the covered employer intends to hire, or has hired, the individual whose information the covered employer has submitted to the department for the purpose of providing care to an elderly ~~[adult or a disabled]~~ person or a person with a disability in the home of the ~~[elderly adult or disabled]~~ person;

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

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

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

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

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

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

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

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

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

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

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

(1) (a) It is the Legislature's intent that [~~developmentally disabled persons~~] a person with a developmental disability be provided with an environment and surrounding that, as closely as possible, resembles small community-based, homelike settings, to allow those persons to have the opportunity, to the maximum extent feasible, to exercise their full rights and responsibilities as citizens.

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

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

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

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

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

26-35a-102. Legislative findings.

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

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

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

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

26-35a-103. Definitions.

As used in this chapter:

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

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

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

(A) a general acute hospital as defined in Subsection 26-21-2(11); and

(B) a critical access hospital which meets the criteria of 42[;] U.S.C. Sec. 1395i-4(c)(2) (1998); and

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

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

(i) the Utah State Developmental Center;

(ii) the Utah State Hospital;

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

(iv) a Utah State Veterans' Home.

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

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

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

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

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

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

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

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31A-1-301. Definitions.

As used in this title, unless otherwise specified:

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

(i) a medical condition including:

(A) a medical care expense; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) a long-term care contract; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage;

(D) loss of income coverage;

(E) prescription drug coverage;

(F) dental coverage; or

(G) vision coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Administrator" is defined in Subsection (159).

(4) "Adult" means an individual who has attained the age of at least 18 years.

(5) "Affiliate" means a person who controls, is controlled by, or is under common

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control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of individuals manage the corporations.

(6) "Agency" means:

(a) a person other than an individual, including a sole proprietorship by which an individual does business under an assumed name; and

(b) an insurance organization licensed or required to be licensed under Section 31A-23a-301.

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

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

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

(10) "Application" means a document:

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

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

(A) insure the risk under:

(I) the coverage as originally offered; or

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

(B) decline to insure the risk; or

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

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

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

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(g) a trust instrument;

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

and

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

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, up to and including surrender of the person in execution of a sentence imposed under Subsection 77-20-7(1), as a condition to the release of that person from confinement.

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

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

(a) without individual underwriting or application; and

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

(15) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated.

(16) "Business entity" means:

(a) a corporation;

(b) an association;

(c) a partnership;

(d) a limited liability company;

(e) a limited liability partnership; or

(f) another legal entity.

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

(18) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections apply by reference under:

(a) Section 31A-7-201;

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

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

(19) (a) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated.

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

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corporation.

(20) "Captive insurance company" means:

(a) an insurer:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or

(b) in the case of a group or association, an insurer:

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) a member organization;

(B) a group member; or

(C) an affiliate of:

(I) a member organization; or

(II) a group member.

(21) "Casualty insurance" means liability insurance.

(22) "Certificate" means evidence of insurance given to:

(a) an insured under a group insurance policy; or

(b) a third party.

(23) "Certificate of authority" is included within the term "license."

(24) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of a benefit according to the terms of an insurance policy.

(25) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent supervisory official of another jurisdiction.

(27) (a) "Continuing care insurance" means insurance that:

(i) provides board and lodging;

(ii) provides one or more of the following:

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- (A) a personal service;
- (B) a nursing service;
- (C) a medical service; or
- (D) any other health-related service; and

(iii) provides the coverage described in this Subsection (27)(a) under an agreement effective:

- (A) for the life of the insured; or
- (B) for a period in excess of one year.

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

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

- (i) by contract;
- (ii) by common management;
- (iii) through the ownership of voting securities; or
- (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

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

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

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

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

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

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

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

(i) a corporation doing business:

(A) as:

(I) an insurance producer;

(II) a limited line producer;

(III) a consultant;

(IV) a managing general agent;

(V) a reinsurance intermediary;

(VI) a third party administrator; or

(VII) an adjuster; and

(B) under:

(I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;

(II) Chapter 25, Third Party Administrators; or

(III) Chapter 26, Insurance Adjusters; or

(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.

(b) "Stock corporation" means a stock insurance corporation.

(c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

(33) (a) "Creditable coverage" has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.

(b) "Creditable coverage" includes coverage that is offered through a public health plan such as:

(i) the Primary Care Network Program under a Medicaid primary care network demonstration waiver obtained subject to Section 26-18-3;

(ii) the Children's Health Insurance Program under Section 26-40-106; or

(iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.

(34) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the

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debtor [~~is disabled~~] has a disability.

(35) (a) "Credit insurance" means insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation.

(b) "Credit insurance" includes:

- (i) credit accident and health insurance;
- (ii) credit life insurance;
- (iii) credit property insurance;
- (iv) credit unemployment insurance;
- (v) guaranteed automobile protection insurance;
- (vi) involuntary unemployment insurance;
- (vii) mortgage accident and health insurance;
- (viii) mortgage guaranty insurance; and
- (ix) mortgage life insurance.

(36) "Credit life insurance" means insurance on the life of a debtor in connection with an extension of credit that pays a person if the debtor dies.

(37) "Credit property insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that protects the property until the debt is paid.

(38) "Credit unemployment insurance" means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
 - (i) specific loan; or
 - (ii) credit transaction.

(39) "Creditor" means a person, including an insured, having a claim, whether:

- (a) matured;
- (b) unmatured;
- (c) liquidated;
- (d) unliquidated;
- (e) secured;
- (f) unsecured;
- (g) absolute;

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(h) fixed; or

(i) contingent.

(40) (a) "Customer service representative" means a person that provides an insurance service and insurance product information:

(i) for the customer service representative's:

(A) producer; or

(B) consultant employer; and

(ii) to the customer service representative's employer's:

(A) customer;

(B) client; or

(C) organization.

(b) A customer service representative may only operate within the scope of authority of the customer service representative's producer or consultant employer.

(41) "Deadline" means a final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order; and

(b) by which a required filing or payment must be received by the department.

(42) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is considered to have taken a specific action. If the statute so provides, a condition precedent may be the commissioner's failure to take a specific action.

(43) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(44) "Department" means the Insurance Department.

(45) "Director" means a member of the board of directors of a corporation.

(46) "Disability" means a physiological or psychological condition that partially or totally limits an individual's ability to:

(a) perform the duties of:

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(i) that individual's occupation; or
(ii) any occupation for which the individual is reasonably suited by education, training, or experience; or

(b) perform two or more of the following basic activities of daily living:

- (i) eating;
- (ii) toileting;
- (iii) transferring;
- (iv) bathing; or
- (v) dressing.

(47) "Disability income insurance" is defined in Subsection (76).

(48) "Domestic insurer" means an insurer organized under the laws of this state.

(49) "Domiciliary state" means the state in which an insurer:

- (a) is incorporated;
- (b) is organized; or
- (c) in the case of an alien insurer, enters into the United States.

(50) (a) "Eligible employee" means:

- (i) an employee who:
 - (A) works on a full-time basis; and
 - (B) has a normal work week of 30 or more hours; or
- (ii) a person described in Subsection (50)(b).

(b) "Eligible employee" includes, if the individual is included under a health benefit plan of a small employer:

- (i) a sole proprietor;
- (ii) a partner in a partnership; or
- (iii) an independent contractor.
- (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):
 - (i) an individual who works on a temporary or substitute basis for a small employer;
 - (ii) an employer's spouse; or
 - (iii) a dependent of an employer.

(51) "Employee" means an individual employed by an employer.

(52) "Employee benefits" means one or more benefits or services provided to:

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- (a) an employee; or
- (b) a dependent of an employee.

(53) (a) "Employee welfare fund" means a fund:

(i) established or maintained, whether directly or through a trustee, by:

- (A) one or more employers;
- (B) one or more labor organizations; or
- (C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund:

- (A) by or on behalf of an employer doing business in this state; or
- (B) for the benefit of a person employed in this state.

(b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax revenues.

(54) "Endorsement" means a written agreement attached to a policy or certificate to modify the policy or certificate coverage.

(55) "Enrollment date," with respect to a health benefit plan, means:

- (a) the first day of coverage; or
- (b) if there is a waiting period, the first day of the waiting period.

(56) (a) "Escrow" means:

(i) a real estate settlement or real estate closing conducted by a third party pursuant to the requirements of a written agreement between the parties in a real estate transaction; or

(ii) a settlement or closing involving:

- (A) a mobile home;
- (B) a grazing right;
- (C) a water right; or
- (D) other personal property authorized by the commissioner.

(b) "Escrow" includes the act of conducting a:

- (i) real estate settlement; or
- (ii) real estate closing.

(57) "Escrow agent" means:

- (a) an insurance producer with:

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- (i) a title insurance line of authority; and
- (ii) an escrow subline of authority; or
- (b) a person defined as an escrow agent in Section 7-22-101.

(58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term "excludes" are representative examples for use in interpretation of this title.

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

- (a) a specific physical condition;
- (b) a specific medical procedure;
- (c) a specific disease or disorder; or
- (d) a specific prescription drug or class of prescription drugs.

(60) "Expense reimbursement insurance" means insurance:

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

(b) written:

- (i) as a daily limit for a specific number of days in a hospital; and
- (ii) to have a one or two day waiting period following a hospitalization.

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

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

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

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

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

- (A) Section 31A-3-103; or
- (B) rule.

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

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

- (a) a policy;
- (b) a rate;
- (c) a form;
- (d) a document;
- (e) a plan;
- (f) a manual;
- (g) an application;
- (h) a report;
- (i) a certificate;
- (j) an endorsement;
- (k) an actuarial certification;
- (l) a licensee annual statement;
- (m) a licensee renewal application;
- (n) an advertisement; or
- (o) an outline of coverage.

(64) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

(65) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

(66) (a) "Form" means one of the following prepared for general use:

- (i) a policy;
- (ii) a certificate;
- (iii) an application;
- (iv) an outline of coverage; or
- (v) an endorsement.

(b) "Form" does not include a document specially prepared for use in an individual case.

(67) "Franchise insurance" means an individual insurance policy provided through a mass marketing arrangement involving a defined class of persons related in some way other

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than through the purchase of insurance.

(68) "General lines of authority" include:

- (a) the general lines of insurance in Subsection (69);
- (b) title insurance under one of the following sublines of authority:
 - (i) search, including authority to act as a title marketing representative;
 - (ii) escrow, including authority to act as a title marketing representative; and
 - (iii) title marketing representative only;
- (c) surplus lines;
- (d) workers' compensation; and
- (e) any other line of insurance that the commissioner considers necessary to recognize

in the public interest.

(69) "General lines of insurance" include:

- (a) accident and health;
- (b) casualty;
- (c) life;
- (d) personal lines;
- (e) property; and
- (f) variable contracts, including variable life and annuity.

(70) "Group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care:

- (a) (i) to an employee; or
- (ii) to a dependent of an employee; and
- (b) (i) directly;
- (ii) through insurance reimbursement; or
- (iii) through another method.

(71) (a) "Group insurance policy" means a policy covering a group of persons that is issued:

- (i) to a policyholder on behalf of the group; and
- (ii) for the benefit of a member of the group who is selected under a procedure defined

in:

- (A) the policy; or

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(B) an agreement that is collateral to the policy.

(b) A group insurance policy may include a member of the policyholder's family or a dependent.

(72) "Guaranteed automobile protection insurance" means insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

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

(i) provides health care insurance;

(ii) provides major medical expense insurance; or

(iii) is offered as a substitute for hospital or medical expense insurance, such as:

(A) a hospital confinement indemnity; or

(B) a limited benefit plan.

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

(i) provides benefits solely for:

(A) accident;

(B) dental;

(C) income replacement;

(D) long-term care;

(E) a Medicare supplement;

(F) a specified disease;

(G) vision; or

(H) a short-term limited duration; or

(ii) is offered and marketed as supplemental health insurance.

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

(a) a professional service;

(b) a personal service;

(c) a facility;

(d) equipment;

(e) a device;

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(f) supplies; or

(g) medicine.

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

(i) a health care benefit; or

(ii) payment of an incurred health care expense.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing a benefit for:

(i) replacement of income;

(ii) short-term accident;

(iii) fixed indemnity;

(iv) credit accident and health;

(v) supplements to liability;

(vi) workers' compensation;

(vii) automobile medical payment;

(viii) no-fault automobile;

(ix) equivalent self-insurance; or

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

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

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

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

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

(80) "Individual" means a natural person.

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

(a) property in transit on or over land;

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

(c) bailee liability;

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

(e) personal and commercial property floaters.

(82) "Insolvency" means that:

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

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or

(c) an insurer is determined to be hazardous under this title.

(83) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;

(ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

(84) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

(85) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance by an organization that is or is required to be licensed under this title;

(b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:

(i) by a single employer or by multiple employer groups; or

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- (ii) through one or more trusts, associations, or other entities;
- (c) providing an annuity:
 - (i) including an annuity issued in return for a gift; and
 - (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);
- (d) providing the characteristic services of a motor club as outlined in Subsection (113);
- (e) providing another person with insurance;
- (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;
- (g) transacting or proposing to transact any phase of title insurance, including:
 - (i) solicitation;
 - (ii) negotiation preliminary to execution;
 - (iii) execution of a contract of title insurance;
 - (iv) insuring;
 - (v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance; and
 - (vi) transacting or proposing a life settlement; and
- (h) doing, or proposing to do, any business in substance equivalent to Subsections (85)(a) through (g) in a manner designed to evade this title.
- (86) "Insurance consultant" or "consultant" means a person who:
 - (a) advises another person about insurance needs and coverages;
 - (b) is compensated by the person advised on a basis not directly related to the insurance placed; and
 - (c) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer or producer for advice given.
- (87) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.
- (88) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
 - (b) With regards to the selling, soliciting, or negotiating of an insurance product to an

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insurance customer or an insured:

(i) "producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating a product of that insurer; and

(ii) "producer for the insured" means a producer who:

(A) is compensated directly and only by an insurance customer or an insured; and

(B) receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating a product of that insurer to an insurance customer or insured.

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

(i) a policyholder;

(ii) a subscriber;

(iii) a member; and

(iv) a beneficiary.

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

(i) applies only to this title; and

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

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

(i) a fraternal benefit society;

(ii) an issuer of a gift annuity other than an annuity specified in Subsections 31A-22-1305(2) and (3);

(iii) a motor club;

(iv) an employee welfare plan; and

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

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

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

(92) "Involuntary unemployment insurance" means insurance:

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

(b) that provides indemnity if the debtor is involuntarily unemployed for payments

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coming due on a:

- (i) specific loan; or
- (ii) credit transaction.

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

(a) employed an average of at least 51 eligible employees on each business day during the preceding calendar year; and

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

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

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

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

(b) through special enrollment.

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

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

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

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

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

- (A) Subsection (107) for medical malpractice insurance;
- (B) Subsection (134) for professional liability insurance; and
- (C) Subsection (168) for workers' compensation insurance;

(ii) for a medical, hospital, surgical, and funeral benefit to a person other than the insured who is injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of a human

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being, exclusive of the coverages under:

- (A) Subsection (107) for medical malpractice insurance;
- (B) Subsection (134) for professional liability insurance; and
- (C) Subsection (168) for workers' compensation insurance;
- (iii) for loss or damage to property resulting from an accident to or explosion of a

boiler, pipe, pressure container, machinery, or apparatus;

- (iv) for loss or damage to property caused by:

- (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
- (B) water entering through a leak or opening in a building; or

(v) for other loss or damage properly the subject of insurance not within another kind of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

- (b) "Liability insurance" includes:

- (i) vehicle liability insurance;
- (ii) residential dwelling liability insurance; and

(iii) making inspection of, and issuing a certificate of inspection upon, an elevator, boiler, machinery, or apparatus of any kind when done in connection with insurance on the elevator, boiler, machinery, or apparatus.

(98) (a) "License" means authorization issued by the commissioner to engage in an activity that is part of or related to the insurance business.

- (b) "License" includes a certificate of authority issued to an insurer.

- (99) (a) "Life insurance" means:

- (i) insurance on a human life; and
- (ii) insurance pertaining to or connected with human life.

- (b) The business of life insurance includes:

- (i) granting a death benefit;
- (ii) granting an annuity benefit;
- (iii) granting an endowment benefit;
- (iv) granting an additional benefit in the event of death by accident;
- (v) granting an additional benefit to safeguard the policy against lapse; and
- (vi) providing an optional method of settlement of proceeds.

- (100) "Limited license" means a license that:

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- (a) is issued for a specific product of insurance; and
 - (b) limits an individual or agency to transact only for that product or insurance.
- (101) "Limited line credit insurance" includes the following forms of insurance:

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

(102) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to an individual through a master, corporate, group, or individual policy.

(103) "Limited line insurance" includes:

- (a) bail bond;
- (b) limited line credit insurance;
- (c) legal expense insurance;
- (d) motor club insurance;
- (e) rental car-related insurance;
- (f) travel insurance;
- (g) crop insurance;
- (h) self-service storage insurance; and
- (i) another form of limited insurance that the commissioner determines by rule should

be designated a form of limited line insurance.

(104) "Limited lines authority" includes:

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(a) the lines of insurance listed in Subsection (103); and

(b) a customer service representative.

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

(106) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

(i) in a setting other than an acute care unit of a hospital;

(ii) for not less than 12 consecutive months for a covered person on the basis of:

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

(iii) for one or more necessary or medically necessary services that are:

(A) diagnostic;

(B) preventative;

(C) therapeutic;

(D) rehabilitative;

(E) maintenance; or

(F) personal care; and

(iv) that may be issued by:

(A) an insurer;

(B) a fraternal benefit society;

(C) (I) a nonprofit health hospital; and

(II) a medical service corporation;

(D) a prepaid health plan;

(E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)

to the extent that the entity is otherwise authorized to issue life or health care insurance.

(b) "Long-term care insurance" includes:

(i) any of the following that provide directly or supplement long-term care insurance:

(A) a group or individual annuity or rider; or

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- (B) a life insurance policy or rider;
 - (ii) a policy or rider that provides for payment of benefits on the basis of:
 - (A) cognitive impairment; or
 - (B) functional capacity; or
 - (iii) a qualified long-term care insurance contract.
 - (c) "Long-term care insurance" does not include:
 - (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
 - (ii) basic hospital expense coverage;
 - (iii) basic medical/surgical expense coverage;
 - (iv) hospital confinement indemnity coverage;
 - (v) major medical expense coverage;
 - (vi) income replacement or related asset-protection coverage;
 - (vii) accident only coverage;
 - (viii) coverage for a specified:
 - (A) disease; or
 - (B) accident;
 - (ix) limited benefit health coverage; or
 - (x) a life insurance policy that accelerates the death benefit to provide the option of a lump sum payment:
 - (A) if the following are not conditioned on the receipt of long-term care:
 - (I) benefits; or
 - (II) eligibility; and
 - (B) the coverage is for one or more the following qualifying events:
 - (I) terminal illness;
 - (II) medical conditions requiring extraordinary medical intervention; or
 - (III) permanent institutional confinement.
- (107) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of a medical service other than the practice and provision of a dental service.
- (108) "Member" means a person having membership rights in an insurance corporation.

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(109) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

(110) "Mortgage accident and health insurance" means insurance offered in connection with an extension of credit that provides indemnity for payments coming due on a mortgage while the debtor [~~is disabled~~] has a disability.

(111) "Mortgage guaranty insurance" means surety insurance under which a mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

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

(113) "Motor club" means a person:

(a) licensed under:

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

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

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

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

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

(iii) (A) trip reimbursement;

(B) towing services;

(C) emergency road services;

(D) stolen automobile services;

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

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

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

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

(a) that is issued by an insurer; and

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

(116) "Nonparticipating" means a plan of insurance under which the insured is not

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entitled to receive a dividend representing a share of the surplus of the insurer.

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

(a) ships or hulls of ships;

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

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

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

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

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

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

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

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

(b) receives:

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

(ii) another government health benefit.

(122) "Person" includes:

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

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- (f) a trust;
- (g) a limited liability company;
- (h) a reciprocal;
- (i) a syndicate; or
- (j) another similar entity or combination of entities acting in concert.

(123) "Personal lines insurance" means property and casualty insurance coverage sold for primarily noncommercial purposes to:

- (a) an individual; or
- (b) a family.

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

(125) "Plan year" means:

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

- (i) the plan document of a group health plan; or
- (ii) a summary plan description of a group health plan;

(b) if the plan document or summary plan description does not designate a plan year or there is no plan document or summary plan description:

- (i) the year used to determine deductibles or limits;
- (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

or

(iii) the employer's taxable year if:

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

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

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

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

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

- (i) purports to be an enforceable contract; and
 - (ii) memorializes in writing some or all of the terms of an insurance contract.
- (b) "Policy" includes a service contract issued by:
- (i) a motor club under Chapter 11, Motor Clubs;
 - (ii) a service contract provided under Chapter 6a, Service Contracts; and

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(iii) a corporation licensed under:

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

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

(c) "Policy" does not include:

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

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

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

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

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

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

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

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

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

(b) "Premium" includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

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

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

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

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

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

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

- (i) from all hazards or causes; and

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

(b) "Property insurance" does not include:

- (i) inland marine insurance; and

- (ii) ocean marine insurance.

(136) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means:

- (a) an individual or group insurance contract that meets the requirements of Section 7702B(b), Internal Revenue Code; or

- (b) the portion of a life insurance contract that provides long-term care insurance:

- (i) (A) by rider; or

- (B) as a part of the contract; and

- (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue Code.

(137) "Qualified United States financial institution" means an institution that:

- (a) is:

- (i) organized under the laws of the United States or any state; or

- (ii) in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

- (b) is regulated, supervised, and examined by a United States federal or state authority having regulatory authority over a bank or trust company; and

- (c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of a financial institution whose letters of credit will be acceptable to the commissioner as determined by:

- (i) the commissioner by rule; or

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(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.

(138) (a) "Rate" means:

(i) the cost of a given unit of insurance; or

(ii) for property or casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before the application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

(139) (a) Except as provided in Subsection (139)(b), "rate service organization" means a person who assists an insurer in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) an individual serving as an actuarial or legal consultant.

(140) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

(d) a rating formula that describes steps, policies, and procedures for determining initial and renewal policy premiums.

(141) "Received by the department" means:

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(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the post mark date, if delivered by mail;

(c) the delivery service's post mark or pickup date, if delivered by a delivery service;

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

(142) "Reciprocal" or "interinsurance exchange" means an unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of the persons; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

(143) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

(a) the insurer transferring the risk as the "ceding insurer"; and

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

(144) "Reinsurer" means a person licensed in this state as an insurer with the authority to assume reinsurance.

(145) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

(146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract.

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(b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a liability assumed under a reinsurance contract.

(147) "Rider" means an endorsement to:

- (a) an insurance policy; or
- (b) an insurance certificate.

(148) (a) "Security" means a:

- (i) note;
- (ii) stock;
- (iii) bond;
- (iv) debenture;
- (v) evidence of indebtedness;
- (vi) certificate of interest or participation in a profit-sharing agreement;
- (vii) collateral-trust certificate;
- (viii) preorganization certificate or subscription;
- (ix) transferable share;
- (x) investment contract;
- (xi) voting trust certificate;
- (xii) certificate of deposit for a security;
- (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
- (xiv) commodity contract or commodity option;
- (xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections (148)(a)(i) through (xiv); or
- (xvi) another interest or instrument commonly known as a security.

(b) "Security" does not include:

- (i) any of the following under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period:
 - (A) insurance;
 - (B) an endowment policy; or
 - (C) an annuity contract; or

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(ii) a burial certificate or burial contract.

(149) "Secondary medical condition" means a complication related to an exclusion from coverage in accident and health insurance.

(150) "Self-insurance" means an arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this Subsection (150), "self-insurance" does not include an arrangement under which a number of persons spread their risks among themselves.

(b) "Self-insurance" includes:

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

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

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

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

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

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

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

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

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

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

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

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

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

(157) Subject to Subsection (83)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from the failure of a principal to pay or perform the principal's obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

(158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by the insurer as permanent.

(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus.

(iii) Except for assessable mutuals, the minimum permanent surplus requirement is the same as the minimum required capital requirement that applies to stock insurers.

(c) "Excess surplus" means:

(i) for a life insurer, accident and health insurer, health organization, or property and casualty insurer as defined in Section 31A-17-601, the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 2.5; and

(II) the sum of the insurer's or health organization's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 3.0; and

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(II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and
(ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

(159) "Third party administrator" or "administrator" means a person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering a:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance for which the insurer holds a license in this state; or

(e) a person:

(i) licensed or exempt from licensing under:

(A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or

(B) Chapter 26, Insurance Adjusters; and

(ii) whose activities are limited to those authorized under the license the person holds or for which the person is exempt.

(160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner of real or personal property or the holder of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

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(161) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) another item provided by the RBC instructions, as RBC instructions is defined in Section 31A-17-601.

(162) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

(163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state; or

(ii) transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer:

(i) holding a valid certificate of authority to do an insurance business in this state; and

(ii) transacting business as authorized by a valid certificate.

(164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

(165) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle comprehensive or vehicle physical damage coverage under Subsection (135).

(166) "Voting security" means a security with voting rights, and includes a security convertible into a security with a voting right associated with the security.

(167) "Waiting period" for a health benefit plan means the period that must pass before coverage for an individual, who is otherwise eligible to enroll under the terms of the health benefit plan, can become effective.

(168) "Workers' compensation insurance" means:

(a) insurance for indemnification of an employer against liability for compensation

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based on:

- (i) a compensable accidental injury; and
- (ii) occupational disease disability;
- (b) employer's liability insurance incidental to workers' compensation insurance and written in connection with workers' compensation insurance; and
- (c) insurance assuring to a person entitled to workers' compensation benefits the compensation provided by law.

Section 36. Section **31A-22-611** is amended to read:

31A-22-611. Coverage for children with a disability.

(1) For the purposes of this section:

(a) [~~"Disabled dependent"~~] "Dependent with a disability" means a child who is and continues to be both:

- (i) unable to engage in substantial gainful employment to the degree that the child can achieve economic independence due to a medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; and
- (ii) chiefly dependent upon an insured for support and maintenance since the child reached the age specified in Subsection 31A-22-610.5(2).

[~~(c)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

- (i) [~~mental retardation~~] an intellectual disability;
- (ii) organic brain syndrome;
- (iii) emotional or mental illness; or
- (iv) specific learning disabilities as determined by the insurer.

[~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or disfigurement, or anatomical loss affecting one or more of the following body systems:

- (i) neurological;
- (ii) musculoskeletal;
- (iii) special sense organs;
- (iv) respiratory organs;
- (v) speech organs;
- (vi) cardiovascular;

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- (vii) reproductive;
- (viii) digestive;
- (ix) genito-urinary;
- (x) hemic and lymphatic;
- (xi) skin; or
- (xii) endocrine.

(2) The insurer may require proof of the incapacity and dependency be furnished by the person insured under the policy within 30 days of the effective date or the date the child attains the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the insurer may not require proof more often than annually after the two-year period immediately following attainment of the limiting age by the [~~disabled~~] dependent with a disability.

(3) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall, upon application, provide coverage for all unmarried [~~disabled~~] dependents with a disability who have been continuously covered, with no break of more than 63 days, under any accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

(4) Every accident and health insurance policy or contract that provides coverage of a [~~disabled~~] dependent with a disability shall not terminate the policy due to an age limitation.

Section 37. Section **31A-22-614** is amended to read:

31A-22-614. Claims under accident and health policies.

(1) Section 31A-21-312 applies generally to claims under accident and health policies.

(2) (a) Subject to Subsection (1), an accident and health insurance policy may not contain a claim notice requirement less favorable to the insured than one which requires written notice of the claim within 20 days after the occurrence or commencement of any loss covered by the policy. The policy shall specify to whom claim notices may be given.

(b) If a loss of time benefit under a policy may be paid for a period of at least two years, an insurer may require periodic notices that the insured continues to [~~be disabled~~] have a disability, unless the insured is legally incapacitated. The insured's delay in giving that notice does not impair the insured's or beneficiary's right to any indemnity which would otherwise have accrued during the six months preceding the date on which that notice is actually given.

(3) An accident and health insurance policy may not contain a time limit on proof of

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loss which is more restrictive to the insured than a provision requiring written proof of loss, delivered to the insurer, within the following time:

(a) for a claim where periodic payments are contingent upon continuing loss, within 90 days after the termination of the period for which the insurer is liable; or

(b) for any other claim, within 90 days after the date of the loss.

(4) (a) (i) Section 31A-26-301 applies generally to the payment of claims.

(ii) Indemnity for loss of life is paid in accordance with the beneficiary designation effective at the time of payment. If no valid beneficiary designation exists, the indemnity is paid to the insured's estate. Any other accrued indemnities unpaid at the insured's death are paid to the insured's estate.

(b) Reasonable facility of payment clauses, specified by the commissioner by rule or in approving the policy form, are permitted. Payment made in good faith and in accordance with those clauses discharges the insurer's obligation to pay those claims.

(c) All or a portion of any indemnities provided under an accident and health policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering the services.

Section 38. Section **31A-22-625** is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, before reaching a maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health

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conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on:

- (A) episodic limits;
- (B) inpatient or outpatient service limits; or
- (C) maximum out-of-pocket limits.

(c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(d) (i) "Mental health condition" means a condition or disorder involving mental illness that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

- (A) a marital or family problem;
- (B) a social, occupational, religious, or other social maladjustment;
- (C) a conduct disorder;
- (D) a chronic adjustment disorder;
- (E) a psychosexual disorder;
- (F) a chronic organic brain syndrome;
- (G) a personality disorder;
- (H) a specific developmental disorder or learning disability; or
- (I) ~~[mental retardation]~~ an intellectual disability.

(e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.

(2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

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(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Section 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) An insurer shall offer a large employer mental health and substance use disorder benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec. 300gg-5, and federal regulations adopted pursuant to that act.

(4) (a) An insurer may provide catastrophic mental health coverage to a small employer through a managed care organization or system in a manner consistent with Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the insurance policy uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a

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mental health condition must be rendered:

- (i) by a mental health therapist as defined in Section 58-60-102; or
- (ii) in a health care facility:
 - (A) licensed or otherwise authorized to provide mental health services pursuant to:
 - (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or
 - (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and
 - (B) that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may prohibit an insurance policy that provides mental health coverage in a manner that is inconsistent with this section.

(6) The commissioner shall:

(a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of insurance policies that include:

- (i) no mental health coverage;
- (ii) 50/50 mental health coverage;
- (iii) catastrophic mental health coverage; and
- (iv) coverage that exceeds the minimum requirements of this section.

(7) This section may not be construed as discouraging or otherwise preventing an insurer from providing mental health coverage in connection with an individual insurance policy.

(8) This section shall be repealed in accordance with Section 63I-1-231.

Section 39. Section **31A-22-802** is amended to read:

31A-22-802. Definitions.

As used in this ~~[Part 8]~~ part:

(1) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor ~~[is disabled]~~ has a disability.

(2) "Credit life insurance" means life insurance on the life of a debtor in connection with a specific loan or credit transaction.

(3) "Credit transaction" means any transaction under which the payment for money

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loaned or for goods, services, or properties sold or leased is to be made on future dates.

(4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or property, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any lender or vendor.

(5) "Debtor" means a borrower of money or a purchaser, including a lessee under a lease intended as security, of goods, services, or property, for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a credit transaction, including principal finance charges and interest.

(7) "Net indebtedness" means the total amount required to liquidate the indebtedness, exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage, or any finance charge.

(8) "Net written premiums" means gross written premiums minus refunds on termination.

Section 40. Section **31A-23a-114** is amended to read:

31A-23a-114. Temporary individual or agency license -- Trustee for terminated licensee's business.

(1) (a) The commissioner may issue a temporary individual or agency license:

(i) to a person listed in Subsection (1)(b):

(A) if the commissioner considers that the temporary license is necessary:

(I) for the servicing of an insurance business in the public interest; and

(II) to provide continued service to the insureds who procured insurance in a circumstance described in Subsection (1)(b);

(B) for a period not to exceed 180 days; and

(C) without requiring an examination; or

(ii) in any other circumstance:

(A) if the commissioner considers the public interest will best be served by issuing the temporary license;

(B) for a period not to exceed 180 days; and

(C) without requiring an examination.

(b) The commissioner may issue a temporary individual or agency license in

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accordance with Subsection (1)(a) to:

(i) the surviving spouse or court-appointed personal representative of a licensee who dies or ~~[becomes mentally or physically disabled]~~ acquires a mental or physical disability to allow adequate time for:

(A) the sale of the insurance business owned by the licensee;

(B) recovery or return of the licensee to the business; or

(C) the training and licensing of new personnel to operate the licensee's business;

(ii) to a member or employee of a business entity licensed as an agency upon the death or disability of an individual designated in:

(A) the business entity application; or

(B) the license; or

(iii) the designee of a licensed agency entering active service in the armed forces of the United States of America.

(2) If a person's license is terminated under Section 31A-23a-111 or 31A-23a-113, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:

(a) at the request of the person whose license is terminated; or

(b) upon the commissioner's own initiative.

(3) This section does not apply if the deceased ~~[or disabled]~~ licensee or licensee with a disability does not or did not own any ownership interest in the accounts and associated expiration lists that were previously serviced by the licensee.

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

(i) require a temporary licensee to have a suitable sponsor who:

(A) is a licensee; and

(B) assumes responsibility for all acts of the temporary licensee; or

(ii) impose other requirements that are:

(A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall be appointed and perform the trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through

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(vi).

(i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to perform the services required by the trustor's clients.

(B) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as a licensee.

(C) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(ii) (A) If the deceased~~[, disabled]~~ person, person with a disability, or unlicensed person for whom the trustee is acting was a producer, the insurers through which the former producer's business was written shall cooperate with the trustee in allowing the trustee to service the policies written through the insurer.

(B) The trustee shall abide by the terms of the agency agreement between the former producer and the issuing insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former producer do not bar the trustee from continuing to act under the agreement.

(iii) (A) The commissioner shall set the trustee's compensation, which:

(I) may be stated in terms of a percentage of commissions; and

(II) shall be equitable.

(B) The compensation shall be paid exclusively from:

(I) the commissions generated by the former licensee's insurance accounts serviced by the trustee; and

(II) other funds the former licensee or the licensee's successor in interest agree to pay.

(C) The trustee has no special priority to commissions over the former licensee's creditors.

(iv) (A) The commissioner or the state may not be held liable for errors or omissions of:

(I) the former licensee; or

(II) the trustee.

(B) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former licensee.

(C) The trustee may be held liable for errors and omissions which arise solely from the

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trustee's negligence.

(D) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided the trustee by:

- (I) the former licensee; or
- (II) the licensee's successor in interest.

(v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(B) The trustee may not purchase the accounts or expiration lists of the former licensee, unless the commissioner expressly ratifies the terms of the sale.

(C) The commissioner may adopt rules that:

- (I) further define the trustee's fiduciary duties; and
- (II) explain how the trustee is to carry out the trustee's responsibilities.

(vi) (A) The trust may be terminated by:

- (I) the commissioner; or
- (II) the person that requested the trust be established.

(B) The trust is terminated by written notice being delivered to:

- (I) the trustee; and
- (II) the commissioner.

(5) (a) The commissioner may by order:

(i) limit the authority of any temporary licensee or trustee in any way the commissioner considers necessary to protect insureds and the public; and

(ii) revoke a temporary license or trustee's appointment if the commissioner finds that the insureds or the public are endangered.

(b) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Section 41. Section **31A-26-215** is amended to read:

31A-26-215. Temporary license -- Appointment of trustee for terminated licensee's business.

(1) (a) The commissioner may issue a temporary insurance adjuster license:

(i) to a person listed in Subsection (1)(b):

(A) if the commissioner considers that the temporary license is necessary:

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- (I) for the servicing of an insurance business in the public interest; and
- (II) to provide continued service to the insureds who are being serviced in a circumstance described in Subsection (1)(b);
 - (B) for a period not to exceed 180 days; and
 - (C) without requiring an examination; or
 - (ii) in any other circumstance:
 - (A) if the commissioner considers the public interest will best be served by issuing the temporary license;
 - (B) for a period not to exceed 180 days; and
 - (C) without requiring an examination.
 - (b) The commissioner may issue a temporary insurance producer license in accordance with Subsection (1)(a) to:
 - (i) the surviving spouse or court-appointed personal representative of a licensed insurance adjuster who dies or ~~[becomes mentally or physically disabled]~~ acquires a mental or physical disability to allow adequate time for:
 - (A) the sale of the insurance business owned by the adjuster;
 - (B) recovery or return of the adjuster to the business; or
 - (C) the training and licensing of new personnel to operate the adjuster's business;
 - (ii) to a member or employee of a business entity licensed as an insurance adjuster upon the death or disability of an individual designated in:
 - (A) the business entity application; or
 - (B) the license; or
 - (iii) the designee of a licensed insurance adjuster entering active service in the armed forces of the United States of America.
- (2) If a person's license is terminated under Section 31A-26-213, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:
 - (a) at the request of the person whose license is terminated; or
 - (b) upon the commissioner's own initiative.
- (3) This section does not apply if the deceased or disabled adjuster has not owned or does not own an ownership interest in the accounts and associated expiration lists that were

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previously serviced by the adjuster.

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

(i) require a temporary licensee to have a suitable sponsor who:

(A) is a licensed producer; and

(B) assumes responsibility for all acts of the temporary licensee; or

(ii) impose other requirements that are:

(A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through (xv).

(i) A trustee appointed under this section shall be licensed under this chapter to perform the services required by the trustor's clients.

(ii) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as an adjuster.

(iii) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an associated adjuster, the insurers through or with which the former adjuster's business was associated shall cooperate with the trustee in allowing the trustee to service the claims associated with or through the insurer.

(v) The trustee shall abide by the terms of any agreement between the former adjuster and the associated insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former agent do not bar the trustee from continuing to act under the agreement.

(vi) The commissioner shall set the trustee's compensation which:

(A) may be stated in terms of a percentage of commissions;

(B) shall be equitable; and

(C) paid exclusively from:

(D) the commissions generated by the former adjuster's accounts serviced by the trustee;

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and

(II) other funds the former adjuster or the former adjuster's successor in interest agree to pay.

(vii) The trustee has no special priority to commissions over the former adjuster's creditors.

(viii) The following may not be held liable for errors or omissions of the former adjuster or the trustee:

(A) the commissioner; or

(B) the state.

(ix) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former adjuster.

(x) The trustee may be held liable for errors and omissions that arise solely from the trustee's negligence.

(xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided to the trustee by:

(A) the former adjuster; or

(B) the former adjuster's successor in interest.

(xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(xiii) The trustee may not purchase the accounts or expiration lists of the former adjuster, unless the commissioner expressly ratifies the terms of the sale.

(xiv) The commissioner may adopt rules that:

(A) further define the trustee's fiduciary duties; and

(B) explain how the trustee is to carry out the trustee's responsibilities.

(xv) The trust may be terminated by:

(A) the commissioner; or

(B) the person that requested the trust be established.

(c) A person described in Subsection (4)(b)(xv)(B) shall terminate the trust by sending written notice to:

(i) the trustee; and

(ii) the commissioner.

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(5) (a) The commissioner may by order limit the authority of any temporary licensee or trustee in any way considered necessary to protect:

- (i) persons being serviced; and
- (ii) the public.

(b) The commissioner may by order revoke a temporary license or trustee's appointment if the interest of persons being serviced or the public are endangered.

(c) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Section 42. Section **31A-36-111** is amended to read:

31A-36-111. Prohibited acts.

(1) An owner may not enter into a life settlement at any time before the application or issuance of a policy.

(2) An owner may not enter into a life settlement within two years after the date of issuance of the policy to which the life settlement relates unless the owner certifies to the life settlement provider that one of the following is satisfied:

(a) the policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy if:

(i) the total time covered under the conversion policy plus the time covered under the prior policy is at least 24 months; and

(ii) the time covered under a group policy, calculated without regard to any change in insurance carriers, is continuous and under the same group sponsorship; or

(b) the owner submits to the life settlement provider independent evidence that within the two-year period:

(i) the owner or insured is terminally ill;

(ii) the owner or insured is chronically ill;

(iii) the spouse of the owner dies;

(iv) the owner divorces the owner's spouse;

(v) the owner retires from full-time employment;

(vi) the owner [~~becomes physically or mentally disabled~~] acquires a physical or mental disability and a physician determines that the disability precludes the owner from maintaining full-time employment;

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(vii) a final judgment or order is entered or issued by a court of competent jurisdiction, on the application of a creditor of the owner:

(A) adjudging the owner bankrupt or insolvent;

(B) approving a petition for reorganization of the owner; or

(C) appointing a receiver, trustee, or liquidator for all or a substantial part of the owner's assets;

(viii) the owner experiences a significant decrease in income that is unexpected and impairs the owner's reasonable ability to pay the policy premium; or

(ix) the owner or insured disposes of ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the policy is initially issued.

(3) An insurer may not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement, require any of the following to sign a form, disclosure, consent, or waiver that is not filed with the commissioner for use in connection with a life settlement in this state:

(a) an owner;

(b) an insured;

(c) a life settlement provider; or

(d) a life settlement producer.

(4) (a) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, an insurer shall respond in writing within 30 calendar days of the day of receipt with written acknowledgment:

(i) confirming that the change is effective; or

(ii) specifying the reasons why the requested change cannot be processed.

(b) An insurer may not:

(i) unreasonably delay effecting a change of ownership or beneficiary; and

(ii) otherwise seek to interfere with a life settlement lawfully entered into in this state.

(5) A person may not issue, solicit, or market the purchase of a policy for the primary purpose of or with a primary emphasis on settling the policy.

(6) (a) Unless disclosed to an owner before the execution of a life settlement by the owner, a life settlement producer may not knowingly with respect to the life settlement solicit

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an offer from, effectuate the life settlement with, or make a sale to any of the following that is controlling, controlled by, or under common control with the life settlement producer:

- (i) a life settlement provider;
- (ii) a life settlement purchaser;
- (iii) a financing entity; or
- (iv) a related provider trust.

(b) Unless disclosed to an owner before the execution of a life settlement by the owner, with respect to the life settlement, a life settlement provider may not knowingly enter into the life settlement with the owner, if, in connection with the life settlement, anything of value will be paid to a life settlement producer that is controlling, controlled by, or under common control with:

- (i) the life settlement provider;
- (ii) the life settlement purchaser;
- (iii) a financing entity; or
- (iv) a related provider trust.

Section 43. Section **34-38-14** is amended to read:

34-38-14. Employee not a person with a disability.

An employee or prospective employee whose drug or alcohol test result is confirmed as positive in accordance with this chapter may not, because of those results alone, be defined as a person with a [~~disability~~] disability for purposes of Title 34A, Chapter 5, Utah Antidiscrimination Act.

Section 44. Section **34-41-106** is amended to read:

34-41-106. Employee not a person with a disability.

An employee, volunteer, prospective employee, or prospective volunteer whose drug test results are verified or confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of those results alone, be defined as [~~disabled~~] a person with a disability for purposes of:

- (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- (2) the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 through 12213.

Section 45. Section **34A-2-107** is amended to read:

34A-2-107. Appointment of workers' compensation advisory council --

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Composition -- Terms of members -- Duties -- Compensation.

(1) The commissioner shall appoint a workers' compensation advisory council composed of:

(a) the following voting members:

(i) five employer representatives; and

(ii) five employee representatives; and

(b) the following nonvoting members:

(i) a representative of the Workers' Compensation Fund;

(ii) a representative of a private insurance carrier;

(iii) a representative of health care providers;

(iv) the Utah insurance commissioner or the insurance commissioner's designee; and

(v) the commissioner or the commissioner's designee.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

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

(b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.

(5) (a) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:

(i) the Utah workers' compensation and occupational disease laws;

(ii) the administration of the laws described in Subsection (5)(a)(i);

(iii) rules related to the laws described in Subsection (5)(a)(i); and

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(iv) advising the Legislature in accordance with Subsection (5)(b).

(b) (i) The council and the commission shall jointly study during 2009 the premium assessment under Section 59-9-101 on an admitted insurer writing workers' compensation insurance in this state and on a self-insured employer under Section 34A-2-202 as to:

(A) whether or not the premium assessment should be changed; or

(B) whether or not changes should be made to how the premium assessment is used.

(ii) The council and commission shall jointly report the results of the study described in this Subsection (5)(b) to the Business and Labor Interim Committee by no later than the 2009 November interim meeting.

(6) Regarding workers' compensation, rehabilitation, and reemployment of employees who [~~are disabled~~] acquire a disability because of an industrial injury or occupational disease the council shall:

(a) offer advice on issues requested by:

(i) the commission;

(ii) the division; and

(iii) the Legislature; and

(b) make recommendations to:

(i) the commission; and

(ii) the division.

(7) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.

(8) The commission shall provide staff support to the council.

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

(a) Section 63A-3-106;

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

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

Section 46. Section **34A-2-413** is amended to read:

34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.

(1) (a) In the case of a permanent total disability resulting from an industrial accident

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or occupational disease, the employee shall receive compensation as outlined in this section.

(b) To establish entitlement to permanent total disability compensation, the employee must prove by a preponderance of evidence that:

(i) the employee sustained a significant impairment or combination of impairments as a result of the industrial accident or occupational disease that gives rise to the permanent total disability entitlement;

(ii) the employee [~~is permanently totally disabled~~] has a permanent, total disability; and

(iii) the industrial accident or occupational disease is the direct cause of the employee's permanent total disability.

(c) To establish that an employee [~~is permanently totally disabled~~] has a permanent, total disability the employee must prove by a preponderance of the evidence that:

(i) the employee is not gainfully employed;

(ii) the employee has an impairment or combination of impairments that limit the employee's ability to do basic work activities;

(iii) the industrial or occupationally caused impairment or combination of impairments prevent the employee from performing the essential functions of the work activities for which the employee has been qualified until the time of the industrial accident or occupational disease that is the basis for the employee's permanent total disability claim; and

(iv) the employee cannot perform other work reasonably available, taking into consideration the employee's:

(A) age;

(B) education;

(C) past work experience;

(D) medical capacity; and

(E) residual functional capacity.

(d) Evidence of an employee's entitlement to disability benefits other than those provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

(i) may be presented to the commission;

(ii) is not binding; and

(iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah Occupational Disease Act.

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(e) In determining under Subsections (1)(b) and (c) whether an employee cannot perform other work reasonably available, the following may not be considered:

(i) whether the employee is incarcerated in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) whether the employee is not legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

(2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the injury, limited as follows:

(a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;

(b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of \$45 per week and:

(A) \$5 for a dependent spouse; and

(B) \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and

(ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

(A) the maximum established in Subsection (2)(a); or

(B) the average weekly wage of the employee at the time of the injury; and

(c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.

(3) This Subsection (3) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or before June 30, 1994.

(a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent total disability compensation except as outlined in Section 34A-2-703 as in effect on the date of injury.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation

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payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The Employers' Reinsurance Fund shall for an overpayment of compensation described in Subsection (3)(b), reimburse the overpayment:

- (i) to the employer or its insurance carrier; and
- (ii) out of the Employers' Reinsurance Fund's liability to the employee.

(d) After an employee receives compensation from the employee's employer, its insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities amounting to 312 weeks of compensation at the applicable permanent total disability compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total disability compensation.

(e) Employers' Reinsurance Fund payments shall commence immediately after the employer or its insurance carrier satisfies its liability under this Subsection (3) or Section 34A-2-703.

(4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.

(a) The employer or its insurance carrier is liable for permanent total disability compensation.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) The employer or its insurance carrier may recoup the overpayment of compensation described in Subsection (4) by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(5) (a) A finding by the commission of permanent total disability is not final, unless otherwise agreed to by the parties, until:

- (i) an administrative law judge reviews a summary of reemployment activities undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;
- (ii) the employer or its insurance carrier submits to the administrative law judge:

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(A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably designed to return the employee to gainful employment; or

(B) notice that the employer or its insurance carrier will not submit a plan; and

(iii) the administrative law judge, after notice to the parties, holds a hearing, unless otherwise stipulated, to:

(A) consider evidence regarding rehabilitation; and

(B) review any reemployment plan submitted by the employer or its insurance carrier under Subsection (5)(a)(ii).

(b) Before commencing the procedure required by Subsection (5)(a), the administrative law judge shall order:

(i) the initiation of permanent total disability compensation payments to provide for the employee's subsistence; and

(ii) the payment of any undisputed disability or medical benefits due the employee.

(c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

(d) The employer or its insurance carrier shall be given credit for any disability payments made under Subsection (5)(b) against its ultimate disability compensation liability under this chapter or Chapter 3, Utah Occupational Disease Act.

(e) An employer or its insurance carrier may not be ordered to submit a reemployment plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to Subsections (5)(e)(i) through (iii).

(i) The plan may include, but not require an employee to pay for:

(A) retraining;

(B) education;

(C) medical and disability compensation benefits;

(D) job placement services; or

(E) incentives calculated to facilitate reemployment.

(ii) The plan shall include payment of reasonable disability compensation to provide for the employee's subsistence during the rehabilitation process.

(iii) The employer or its insurance carrier shall diligently pursue the reemployment plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan

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is cause for the administrative law judge on the administrative law judge's own motion to make a final decision of permanent total disability.

(f) If a preponderance of the evidence shows that successful rehabilitation is not possible, the administrative law judge shall order that the employee be paid weekly permanent total disability compensation benefits.

(g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an employee could immediately or without unreasonable delay return to work but for the following, an administrative law judge shall order that the employee be denied the payment of weekly permanent total disability compensation benefits:

(i) incarceration in a facility operated by or contracting with a federal, state, county, or municipal government to house a criminal offender in either a secure or nonsecure setting; or

(ii) not being legally eligible to be employed because of a reason unrelated to the impairment or combination of impairments.

(6) (a) The period of benefits commences on the date the employee [~~became permanently totally disabled~~] acquired the permanent, total disability, as determined by a final order of the commission based on the facts and evidence, and ends:

(i) with the death of the employee; or

(ii) when the employee is capable of returning to regular, steady work.

(b) An employer or its insurance carrier may provide or locate for a permanently totally disabled employee reasonable, medically appropriate, part-time work in a job earning at least minimum wage, except that the employee may not be required to accept the work to the extent that it would disqualify the employee from Social Security disability benefits.

(c) An employee shall:

(i) fully cooperate in the placement and employment process; and

(ii) accept the reasonable, medically appropriate, part-time work.

(d) In a consecutive four-week period when an employee's gross income from the work provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce the employee's permanent total disability compensation by 50% of the employee's income in excess of \$500.

(e) If a work opportunity is not provided by the employer or its insurance carrier, [a

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~~permanently totally disabled employee]~~ an employee with a permanent, total disability may obtain medically appropriate, part-time work subject to the offset provisions of Subsection (6)(d).

(f) (i) The commission shall establish rules regarding the part-time work and offset.

(ii) The adjudication of disputes arising under this Subsection (6) is governed by Part 8, Adjudication.

(g) The employer or its insurance carrier has the burden of proof to show that medically appropriate part-time work is available.

(h) The administrative law judge may:

(i) excuse an employee from participation in any work:

(A) that would require the employee to undertake work exceeding the employee's:

(I) medical capacity; or

(II) residual functional capacity; or

(B) for good cause; or

(ii) allow the employer or its insurance carrier to reduce permanent total disability benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time work is offered, but the employee fails to fully cooperate.

(7) When an employee is rehabilitated or the employee's rehabilitation is possible but the employee has some loss of bodily function, the award shall be for permanent partial disability.

(8) As determined by an administrative law judge, an employee is not entitled to disability compensation, unless the employee fully cooperates with any evaluation or reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The administrative law judge shall dismiss without prejudice the claim for benefits of an employee if the administrative law judge finds that the employee fails to fully cooperate, unless the administrative law judge states specific findings on the record justifying dismissal with prejudice.

(9) (a) The loss or permanent and complete loss of the use of the following constitutes total and permanent disability that is compensated according to this section:

(i) both hands;

(ii) both arms;

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- (iii) both feet;
- (iv) both legs;
- (v) both eyes; or
- (vi) any combination of two body members described in this Subsection (9)(a).

(b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.

(10) (a) An insurer or self-insured employer may periodically reexamine a permanent total disability claim, except those based on Subsection (9), for which the insurer or self-insured employer had or has payment responsibility to determine whether the employee ~~[remains permanently totally disabled]~~ continues to have a permanent, total disability.

(b) Reexamination may be conducted no more than once every three years after an award is final, unless good cause is shown by the employer or its insurance carrier to allow more frequent reexaminations.

(c) The reexamination may include:

- (i) the review of medical records;
- (ii) employee submission to one or more reasonable medical evaluations;
- (iii) employee submission to one or more reasonable rehabilitation evaluations and retraining efforts;
- (iv) employee disclosure of Federal Income Tax Returns;
- (v) employee certification of compliance with Section 34A-2-110; and
- (vi) employee completion of one or more sworn affidavits or questionnaires approved by the division.

(d) The insurer or self-insured employer shall pay for the cost of a reexamination with appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per diem as well as reasonable expert witness fees incurred by the employee in supporting the employee's claim for permanent total disability benefits at the time of reexamination.

(e) If an employee fails to fully cooperate in the reasonable reexamination of a permanent total disability finding, an administrative law judge may order the suspension of the employee's permanent total disability benefits until the employee cooperates with the reexamination.

(f) (i) If the reexamination of a permanent total disability finding reveals evidence that reasonably raises the issue of an employee's continued entitlement to permanent total disability

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compensation benefits, an insurer or self-insured employer may petition the Division of Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include with the petition, documentation supporting the insurer's or self-insured employer's belief that the employee [is] no longer [~~permanently totally disabled~~] has a permanent, total disability.

(ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a hearing.

(iii) Evidence of an employee's participation in medically appropriate, part-time work may not be the sole basis for termination of an employee's permanent total disability entitlement, but the evidence of the employee's participation in medically appropriate, part-time work under Subsection (6) may be considered in the reexamination or hearing with other evidence relating to the employee's status and condition.

(g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorney fees to an attorney retained by an employee to represent the employee's interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded shall be paid by the employer or its insurance carrier in addition to the permanent total disability compensation benefits due.

(h) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.

(11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

Section 47. Section **34A-2-703** is amended to read:

34A-2-703. Payments from Employers' Reinsurance Fund.

If an employee, who has at least a 10% whole person permanent impairment from any cause or origin, subsequently incurs an additional impairment by an accident arising out of and in the course of the employee's employment during the period of July 1, 1988, to June 30, 1994, inclusive, and if the additional impairment results in permanent total disability, the employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the

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payment of benefits as follows:

(1) The employer or its insurance carrier is liable for the first \$20,000 of medical benefits and the initial 156 weeks of permanent total disability compensation as provided in this chapter or Chapter 3, Utah Occupational Disease Act.

(2) Reasonable medical benefits in excess of the first \$20,000 shall be paid in the first instance by the employer or its insurance carrier. Then, as provided in Subsection (5), the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for 50% of those expenses.

(3) After the initial 156-week period under Subsection (1), permanent total disability compensation payable to an employee under this chapter or Chapter 3, Utah Occupational Disease Act, becomes the liability of and shall be paid by the Employers' Reinsurance Fund.

(4) If it is determined that the employee is permanently and totally disabled, the employer or its insurance carrier shall be given credit for all prior payments of temporary total, temporary partial, and permanent partial disability compensation made as a result of the industrial accident. Any overpayment by the employer or its insurance carrier shall be reimbursed by the Employers' Reinsurance Fund under Subsection (5).

(5) (a) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of medical benefits and compensation paid to or on behalf of an employee. A request for Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence of payment of the medical or disability compensation for which the reimbursement is requested. Each request is subject to review as to reasonableness by the administrator. The administrator may determine the manner of reimbursement.

(b) A decision of the administrator under Subsection (5)(a) may be appealed in accordance with Part 8, Adjudication.

(6) If, at the time an employee is determined to ~~[be permanently and totally disabled]~~ have a permanent, total disability, the employee has other actionable workers' compensation claims, the employer or insurance carrier that is liable for the last industrial accident resulting in permanent total disability shall be liable for the benefits payable by the employer as provided in this section and Section 34A-2-413. The employee's entitlement to benefits for prior actionable claims shall then be determined separately on the facts of those claims. Any

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previous permanent partial disability arising out of those claims shall then be considered to be impairments that may give rise to Employers' Reinsurance Fund liability under this section.

Section 48. Section **34A-2-902** is amended to read:

34A-2-902. Workers' compensation claims by emergency medical services providers -- Time limits.

(1) For all purposes of establishing a workers' compensation claim, the "date of accident" is presumed to be the date on which an emergency medical services provider first tests positive for a disease, as defined in Section 78B-8-401. However, for purposes of establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a positive test for a disease occurs within three months after termination of employment, the last date of employment is presumed to be the "date of accident."

(2) The time limits prescribed by Section 34A-2-417 do not apply to an employee whose disability is due to a disease, so long as the employee who claims to have suffered a significant exposure in the service of his employer gives notice, as required by Section 34A-3-108, of the "date of accident."

(3) Any claim for workers' compensation benefits or medical expenses shall be filed with the Division of Adjudication of the Labor Commission within one year after the date on which the employee first [~~becomes disabled~~] acquires a disability or requires medical treatment for a disease, or within one year after the termination of employment as an emergency medical services provider, whichever occurs later.

Section 49. Section **34A-2-903** is amended to read:

34A-2-903. Failure to be tested -- Time limit for death benefits.

(1) An emergency medical services provider who refuses or fails to be tested in accordance with Section 34A-2-901 is not entitled to any of the presumptions provided by this part.

(2) Death benefits payable under Section 34A-2-702 are payable only if it can be established by competent evidence that death was a consequence of or result of the disease and, notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date the employee first [~~became disabled~~] acquired a disability or required medical treatment for the disease that caused [~~his~~] the employee's death.

Section 50. Section **34A-3-104** is amended to read:

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34A-3-104. Employer liability for compensation.

(1) Every employer is liable for the payment of disability and medical benefits to every employee who ~~[becomes disabled]~~ acquires a disability, or death benefits to the dependents of any employee who dies, by reason of an occupational disease under the terms of this chapter.

(2) Compensation shall not be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease occurred ~~[prior to]~~ before 1941.

Section 51. Section **34A-3-107** is amended to read:

34A-3-107. Benefits -- Disability compensation, death, medical, hospital, and burial expenses -- Procedure and payments.

(1) The benefits to which ~~[a disabled]~~ an employee with a disability or the employee's dependents are entitled under this chapter shall be based upon the employee's average weekly wage at the time the cause of action arises and shall be computed in accordance with and in all ways shall be equivalent to the benefits for disability and death provided in Chapter 2, Workers' Compensation Act.

(2) The ~~[disabled]~~ employee with a disability is entitled to medical, hospital, and burial expenses equivalent to those provided in Chapter 2.

(3) The procedure and payment of benefits under this chapter shall be equivalent to and consistent with Chapter 2, including Section 34A-2-703.

Section 52. Section **34A-4-101** is amended to read:

CHAPTER 4. HOSPITAL AND MEDICAL SERVICE FOR MINERS WITH A DISABILITY

34A-4-101. Who entitled.

(1) Certain ~~[disabled]~~ miners with a disability meeting the requirements of Section 34A-4-102 shall be entitled to, and shall receive, the free hospital and medical service provided for in this chapter.

(2) Notwithstanding Subsection (1), in the event occupational diseases are made compensable under Chapter 2, Workers' Compensation Act, or 3, Utah Occupational Disease Act, no employer or insurance carrier shall be permitted to evade payment under Chapter 2 or 3 by compelling a ~~[disabled]~~ miner with a disability to avail ~~[himself]~~ the miner of the benefits provided for in this chapter.

Section 53. Section **34A-4-102** is amended to read:

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34A-4-102. Application for benefits.

To be entitled to the free hospital and medical service provided for in Section 34A-4-101, a ~~[disabled]~~ miner with a disability applying for benefits shall be required to establish under oath the following facts, which shall be conditions precedent to the granting of the free service provided for in this chapter:

- (1) that ~~[he]~~ the miner is and has been a resident of this state for a period of two years immediately preceding the filing of ~~[his]~~ the miner's application;
- (2) that ~~[he]~~ the miner has been employed in the mines of this state for a period of at least five years and that the disability from which ~~[he]~~ the miner is suffering and for which ~~[he]~~ the miner is in need of hospital and medical treatment is due to such employment;
- (3) that ~~[he]~~ the miner is physically incapable of entering remunerative employment and holding a job;
- (4) that ~~[his]~~ the miner's disability is such that hospital and medical attention is necessary; and
- (5) that ~~[he]~~ the miner is financially unable to secure and pay for hospital and medical service.

Section 54. Section **34A-8a-102** is amended to read:

34A-8a-102. Definitions.

- ~~[(2)]~~ (1) "Division" means the Division of Industrial Accidents.
- ~~[(3)]~~ (2) (a) "Gainful employment" means employment that:
- (i) is reasonably attainable in view of an industrial injury or occupational disease; and
 - (ii) offers to an injured worker, as reasonably feasible, an opportunity for earnings.
- (b) Factors considered in determining gainful employment include an injured worker's:
- (i) education;
 - (ii) experience; and
 - (iii) physical and mental impairment and condition.
- ~~[(4)]~~ (3) "Initial written report" means a report required under Section 34A-8a-301.
- ~~[(5)]~~ (4) "Injured worker" means an employee who sustains an industrial injury or occupational disease for which benefits are provided under Chapter 2, Workers' Compensation Act, or Chapter 3, Utah Occupational Disease Act.
- ~~[(1) "Disabled injured worker"]~~ (5) "Injured worker with a disability" means an injured

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worker who:

(a) because of the injury or disease that is the basis of the employee being an injured worker:

(i) is or will be unable to return to work in the injured worker's usual and customary occupation; or

(ii) is unable to perform work for which the injured worker has previous training and experience; and

(b) reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with this chapter.

(6) "Parties" means:

(a) [~~a disabled injured worker~~] an injured worker with a disability;

(b) the employer of the [~~disabled injured worker~~] injured worker with a disability;

(c) the employer's workers' compensation insurance carrier; and

(d) a rehabilitation or reemployment professional for the employer or the employer's workers' compensation insurance carrier.

(7) "Reemployment plan" means a written:

(a) description or rationale for the manner and means by which it is proposed [~~a disabled injured worker~~] an injured worker with a disability may return to gainful employment; and

(b) definition of the voluntary responsibilities of:

(i) the [~~disabled injured worker~~] injured worker with a disability;

(ii) the employer; and

(iii) one or more other parties involved with the implementation of the reemployment plan.

Section 55. Section **34A-8a-301** is amended to read:

34A-8a-301. Initial report on injured worker.

(1) An employer or the employer's workers' compensation insurance carrier shall prepare an initial written report assessing an injured worker's need or lack of need for vocational assistance in reemployment if:

(a) it appears that the injured worker is or will be [~~a disabled injured worker~~] an injured worker with a disability; or

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(b) the period of the injured worker's temporary total disability compensation period exceeds 90 days.

(2) (a) Subject to Subsection (2)(b), an employer or the employer's workers' compensation insurance carrier shall:

- (i) serve the initial written report required by Subsection (1) on the injured worker; and
- (ii) file the initial written report required by Subsection (1) with the division.

(b) An employer or the employer's workers' compensation insurance carrier shall comply with Subsection (2)(a) by no later than 30 days after the earlier of the day on which:

(i) it appears that the injured worker is or will be [~~a disabled injured worker~~] an injured worker with a disability; or

(ii) the 90-day period described in Subsection (1)(b) ends.

(3) With the initial written report required by Subsection (1), an employer or the employer's workers' compensation insurance carrier shall provide an injured worker information regarding reemployment.

Section 56. Section **34A-8a-302** is amended to read:

34A-8a-302. Evaluation of injured worker -- Reemployment plan.

(1) Subject to the other provisions of this section, if an injured worker is [~~a disabled injured worker~~] an injured worker with a disability, the employer or the employer's workers' compensation insurance carrier shall, within 10 days after the day on which the employer or workers' compensation insurance carrier serves the initial written report on the injured worker, refer the [~~disabled injured worker~~] injured worker with a disability to:

- (a) the Utah State Office of Rehabilitation; or
- (b) at the employer's or workers' compensation insurance carrier's option, a private rehabilitation or reemployment service.

(2) An employer or the employer's workers' compensation insurance carrier shall make the referral required by Subsection (1) for the purpose of:

- (a) providing an evaluation; and
- (b) developing a reemployment plan.

(3) The commission may authorize an employer or the employer's workers' compensation insurance carrier to:

- (a) not make a referral required by Subsection (1); or

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(b) make a referral during a different time period than required by Subsection (1).

Section 57. Section **34A-8a-303** is amended to read:

34A-8a-303. Reemployment objectives.

(1) The commission through the division shall administer this chapter with the objective of assisting in returning [~~a disabled injured worker~~] an injured worker with a disability to gainful employment in the following order of employment priority:

- (a) same job, same employer;
- (b) modified job, same employer;
- (c) same job, new employer;
- (d) modified job, new employer;
- (e) new job, new employer; or
- (f) retraining in a new occupation.

(2) Nothing in this chapter or its application is intended to:

- (a) modify or in any way affect an existing employee-employer relationship; or
- (b) provide an employee with a guarantee or right to employment or continued employment with an employer.

Section 58. Section **39-1-59** is amended to read:

39-1-59. Compensation for injury or death.

If any officer or enlisted person of the National Guard is wounded, injured, or otherwise [~~disabled~~] acquires a disability, or is killed or dies of wounds or injuries received while serving on state active duty, under orders of competent authority and not as a result of [~~his~~] the person's own misconduct, the person, the surviving spouse, children, or any dependent relatives, shall receive from the state relief as the Legislature determines. However, in these cases the member, surviving spouse, children, or any dependent relatives, upon investigation by a board of inquiry appointed by the commander in chief, the findings and recommendations of which shall be filed with the state auditor for the action of the Board of Examiners, shall receive temporary compensation from the state, out of funds appropriated for the maintenance of the National Guard, as determined by the Board of Examiners until the next regular session of the Legislature. This compensation may not exceed the rates of pay provided for officers and enlisted persons in this chapter.

Section 59. Section **41-6a-1011** is amended to read:

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41-6a-1011. Pedestrian vehicles.

(1) As used in this section:

(a) (i) "Pedestrian vehicle" means a self-propelled conveyance designed, manufactured, and intended for the exclusive use of a person with a physical disability.

(ii) A "pedestrian vehicle" may not:

(A) exceed 48 inches in width;

(B) have an engine or motor with more than 300 cubic centimeters displacement or with more than 12 brake horsepower; and

(C) be capable of developing a speed in excess of 30 miles per hour.

(b) "Physical disability" means any bodily impairment which precludes a person from walking or otherwise moving about as a pedestrian.

(2) (a) A pedestrian vehicle operated by a ~~[physically disabled]~~ person with a physical disability is exempt from vehicle registration, inspection, and operator license requirements.

(b) Authority to operate a pedestrian vehicle on public highways or sidewalks shall be granted according to rules promulgated by the commissioner of public safety.

(3) (a) A ~~[physically disabled]~~ person with a physical disability may operate a pedestrian vehicle with a motor of not more than .5 brake horsepower capable of developing a speed of not more than eight miles per hour:

(i) on the sidewalk; and

(ii) in all places where pedestrians are allowed.

(b) A permit, license, registration, authority, application, or restriction may not be required or imposed on a ~~[physically disabled person operating]~~ person with a physical disability who operates a pedestrian vehicle under this Subsection (3).

(c) The provisions of this Subsection (3) supercede the provision of Subsection (2)(b).

Section 60. Section **41-22-2** is amended to read:

41-22-2. Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure

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tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (10), or (21), designed for or capable of travel over unimproved terrain.

(b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a ~~[disabled]~~ person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Cross-country" means across natural terrain and off an existing highway, road, route, or trail.

(6) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(7) "Division" means the Division of Parks and Recreation.

(8) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 14 inches or less and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer.

(9) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(10) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(11) (a) "Motor vehicle" means every vehicle which is self-propelled.

(b) "Motor vehicle" includes an off-highway vehicle.

~~[(13)]~~ (12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile that is used by the owner or ~~[his]~~ the owner's agent for agricultural operations.

~~[(12)]~~ (13) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(14) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(15) "Operator" means the person who is in actual physical control of an off-highway vehicle.

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(16) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(17) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(18) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(19) "Register" means the act of assigning a registration number to an off-highway vehicle.

(20) "Roadway" is used as defined in Section 41-6a-102.

(21) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(22) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

(23) "Street-legal all-terrain vehicle" or "street-legal ATV" has the same meaning as defined in Section 41-6a-102.

Section 61. Section **49-11-403** is amended to read:

49-11-403. Purchase of public service credit not otherwise qualifying for benefit.

(1) A member, a participating employer, or a member and a participating employer jointly may purchase service credit equal to the period of the member's employment in the following:

- (a) United States federal employment;
- (b) employment in a private school based in the United States, if the member received an employer paid retirement benefit for the employment;
- (c) public employment in another state or territory of the United States which qualifies the member for membership in the public plan or system covering the employment, but only if the member does not qualify for any retirement benefits based on the employment;
- (d) forfeited service credit in this state if the member does not qualify for an allowance based on the service credit;

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(e) full-time public service while on an approved leave of absence;

(f) the period of time for which disability benefits were paid if:

(i) the member was receiving:

(A) long-term disability benefits;

(B) short-term disability benefits; or

(C) worker's compensation disability benefits; and

(ii) the member's employer had not entered into a benefit protection contract under Section 49-11-404 during the period the member [~~was disabled~~] had a disability due to sickness or accident;

(g) employment covered by a Teachers Insurance and Annuity Association of America retirement plan if the member forfeits any retirement benefit from that retirement plan for the period of employment to be purchased under this Subsection (1)(g); or

(h) employment in a charter school located within the state if the member forfeits any retirement benefit under any other retirement system or plan for the period of employment to be purchased under this Subsection (1)(h).

(2) A member shall:

(a) have at least four years of service credit before a purchase can be made under this section; and

(b) forfeit service credit and any defined contribution balance based on employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

(3) (a) To purchase credit under this section, the member, a participating employer, or a member and a participating employer jointly shall make payment to the system under which the member is currently covered.

(b) The amount of the payment shall be determined by the office based on a formula that is:

(i) recommended by the actuary; and

(ii) adopted by the board.

(4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(5) Total payment must be completed prior to the member's effective date of retirement

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or service credit will be prorated in accordance with the amount paid.

(6) (a) For a purchase made before July 1, 2010, if any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated at the time of retirement.

(b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:

- (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
- (ii) not pay the increased cost and have the purchased service credit prorated.

(c) For a purchase made on or after July 1, 2010:

(i) the purchase shall be made in accordance with rules:

- (A) adopted by the board based on recommendations by the board's actuary; and
- (B) in effect at the time the purchase is completed; and

(ii) the cost of the service credit purchase shall not be recalculated at the time of retirement.

(7) If the recalculated cost under Subsection (6)(a) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.

(8) (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.

(9) Account balances created under Section 49-22-303, 49-22-401, 49-23-302, or 49-23-401 may not be used to purchase service credit for a benefit under Sections 49-22-304, 49-22-305, 49-23-303, and 49-23-304.

Section 62. Section **49-11-404** is amended to read:

49-11-404. Benefit protection contract authorized -- Annual report required.

(1) (a) A participating employer may establish a salary protection program under which its employees are paid during periods of disability.

(b) If a salary protection program is established, a participating employer may enter into benefit protection contracts with the office.

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(c) A salary protection program shall:

(i) pay benefits based on the ~~[disabled member's]~~ rate of compensation of the member with a disability at the time of disability;

(ii) pay benefits over the period of the disability;

(iii) not include settlement or lump sum payments of any type;

(iv) be substantially equivalent to the long-term disability programs offered under Chapter 21, Public Employees' Long-Term Disability Act; and

(v) comply with requirements adopted by the board.

(2) A benefit protection contract shall allow:

(a) the ~~[disabled]~~ member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;

(b) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;

(c) the ~~[disabled]~~ member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and

(d) the benefit for the ~~[disabled]~~ member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract.

(3) (a) The office shall establish the manner and times when employer contributions are paid.

(b) A failure to make the required payments is cause for the office to cancel a contract.

(c) Service credit and salary credit granted and accrued up to the time of cancellation may not be forfeited.

(4) For an employee covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, a benefit protection contract shall allow:

(a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:

(i) the ~~[disabled]~~ member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay

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in effect at the time disability commences;

(ii) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;

(iii) the [~~disabled~~] member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and

(iv) the benefit for the [~~disabled~~] member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract; and

(b) for the defined contribution portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System or Chapter 23, Part 3, Tier II Hybrid Retirement System or for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan or Chapter 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to continue making the nonelective contributions on behalf of the [~~disabled~~] member with a disability or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1), 49-23-302(1)(a), or 49-23-401(1).

(5) A participating employer that has entered into a benefit protection contract under this section shall submit an annual report to the office which identifies:

(a) the employees receiving long-term disability benefits under policies initiated by the participating employer and approved under the benefit protection contract;

(b) the employees that have applied for long-term disability benefits and who are waiting approval; and

(c) the insurance carriers that are actively providing long-term disability benefits.

(6) If an employer fails to provide the annual report required under Subsection (5), the benefits that would have accrued under the benefit protection contract shall be forfeited.

(7) The board may adopt rules to implement and administer this section.

Section 63. Section **49-12-601** is amended to read:

49-12-601. Disability retirement -- Medical examinations -- Reemployment of retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit to medical examination.

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(1) Only members of this system who became eligible for a disability retirement allowance before January 1, 1983, are covered under this section.

(2) (a) The board may, upon the recommendation of the administrator, require any retirant who has been retired for disability and who has not attained the age of 60 years, to undergo a medical examination by a physician or surgeon, appointed by the board, at the place of residence of the retirant or other place mutually agreed upon.

(b) Upon the basis of the examination, the board shall determine whether the [~~disabled~~] retirant with a disability is still incapacitated, physically or mentally, for service under this chapter.

(c) If the board determines that the retirant is not incapacitated, the retirement allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the same class as that held by the retirant when retired for disability.

(d) If any employing unit is unable to reinstate the retirant, the board shall continue the disability retirement allowance of the retirant until employment is available.

(3) (a) If a [~~disabled~~] retirant with a disability under this system reenters covered service and is eligible for membership in the retirement system, the retirement allowance shall be cancelled and the retirant shall immediately become a member of the retirement system.

(b) (i) The member's individual account shall be credited with an amount which is the actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the member's retirement allowance which was derived from the member's accumulated contributions.

(ii) The amount credited may not exceed the amount of accumulated contributions standing at the time of retirement.

(c) Each member shall receive credit for the service in the member's account at the time of retirement.

(4) If the retirement allowance of any [~~disabled~~] retirant with a disability is cancelled for any cause other than reentry into service, the retirant shall be paid the accumulated contributions less the amounts prescribed by Subsection (6).

(5) (a) If any member retired for disability engages in a gainful occupation prior to attaining age 60, the administrator shall reduce the amount of the retirement allowance to an amount which, when added to the compensation earned monthly by the retirant in that

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occupation, may not exceed the amount of the final average monthly salary on the basis of which the current service retirement allowance was determined.

(b) If the earning capacity of the retirant is further altered, the administrator may further alter the retirement allowance as provided in this Subsection (5).

(c) In no event, however, may the retirement benefit be reduced below that portion of the retirant's allowance derived from the retirant's own accumulated contributions.

(d) When the retirant reaches age 60, the retirement allowance shall be made equal to the amount upon which the retirant was originally retired and may not again be modified for any cause.

(6) (a) If any member who retired for disability under age 60, refuses to submit to a medical examination, the retirement allowance may be discontinued until the retirant withdraws that refusal.

(b) If the refusal continues for one year the disability status may be cancelled and membership terminated.

(c) (i) The retirant's accumulated contribution account shall be the actuarial equivalent on the date of the retirant's change of status, based on a disabled life, of that portion of the disability retirement allowance which was derived from the retirant's accumulated contributions.

(ii) The amount credited may not exceed the amount of the retirant's accumulated contributions at the time of disability retirement.

Section 64. Section **49-14-502** is amended to read:

49-14-502. Death of active member in Division B -- Payment of benefits.

(1) If an active member of this system enrolled in Division B under Section 49-14-301 dies, benefits are payable as follows:

(a) If the death is classified by the office as a line-of-duty death, the spouse at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's final average monthly salary.

(b) If the death is not classified by the office as a line-of-duty death, benefits are payable as follows:

(i) If the member has accrued two or more years of public safety service credit at the time of death, the death is considered a line-of-duty death and the benefit shall be paid as

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provided under Subsection (1)(a).

(ii) If the member has accrued less than two years of public safety service credit at the time of death, the spouse at the time of death shall receive a refund of the member's member contributions, plus 50% of the member's most recent 12 months' compensation.

(c) (i) If the member has accrued two or more years of public safety service credit at the time of death, each of the member's unmarried children to age 18 or dependent unmarried [~~mentally or physically disabled~~] children with a mental or physical disability shall receive a monthly allowance of \$50.

(ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or as otherwise provided under Sections 49-11-609 and 49-11-610.

(2) In the event of the death of both parents, the spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.

(3) If a benefit is not distributed under the previous subsections, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

(4) The combined annual payments made to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 65. Section **49-14-504** is amended to read:

49-14-504. Benefits payable upon death of retired member -- Enhanced benefit election -- Rulemaking.

(1) If a retiree who retired under either Division A or Division B dies, the retiree's spouse at the time of death of the retiree shall receive an allowance equal to 65% of the allowance that was being paid to the retiree at the time of death.

(2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance computed in accordance with Section 49-14-402.

(b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.

(3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of an allowance computed in accordance with Section 49-14-402.

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(b) A retiree may elect to purchase the optional spousal death benefit until July 1, 2010.

(c) If an election is made under Subsection (3)(b), the retiree's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.

(d) The board shall make rules to administer the death benefit under this Subsection (3).

(4) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a mental or physical disability, the children shall qualify for a benefit as prescribed for children under Subsection 49-14-502(1)(c) which is payable on the first day of the month following the month in which the retiree died.

Section 66. Section **49-15-502** is amended to read:

49-15-502. Death of active member in Division B -- Payment of benefits.

(1) If an active member of this system enrolled in Division B under Section 49-15-301 dies, benefits are payable as follows:

(a) If the death is classified by the office as a line-of-duty death, the spouse at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's final average monthly salary.

(b) If the death is not classified by the office as a line-of-duty death, and the member has accrued two or more years of public safety service credit at the time of death, the death is considered line-of-duty and the benefit shall be paid as provided under Subsection (1)(a).

(c) If the death is not classified by the office as a line-of-duty death, and the member has accrued less than two years of public safety service credit at the time of death, the spouse at the time of death shall receive a refund of the member's member contributions, plus 50% of the member's most recent 12 months' compensation.

(d) (i) If the member has accrued two or more years of public safety service credit at the time of death, each of the member's unmarried children to age 18 or dependent unmarried [~~mentally or physically disabled~~] children with a mental or physical disability shall receive an allowance of \$50.

(ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or

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as otherwise provided under Section 49-11-609 or 49-11-610.

(2) In the event of the death of both parents, the spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.

(3) If a benefit is not distributed under the previous subsections, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

(4) The combined payments to beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 67. Section **49-15-504** is amended to read:

49-15-504. Benefits payable upon death of retired member -- Enhanced benefit election -- Rulemaking.

(1) If a retiree who retired under either Division A or Division B dies, the retiree's spouse at the time of death of the retiree shall receive an allowance equal to 65% of the allowance that was being paid to the retiree at the time of death.

(2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance computed in accordance with Section 49-15-402.

(b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.

(3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of an allowance computed in accordance with Section 49-15-402.

(b) A retiree may elect to purchase the optional spousal death benefit until July 1, 2010.

(c) If an election is made under Subsection (3)(b), the retiree's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.

(d) The board shall make rules to administer the death benefit under this Subsection (3).

(4) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a

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mental or physical disability, the children shall qualify for a benefit as prescribed under Subsection 49-15-502(1)(d) which is payable on the first day of the month following the month in which the retiree died.

Section 68. Section **49-16-201** is amended to read:

49-16-201. System membership -- Eligibility.

(1) A firefighter service employee who performs firefighter service for an employer participating in this system is eligible for service credit in this system upon the earliest of:

(a) July 1, 1971, if the firefighter service employee was employed by the participating employer on July 1, 1971, and the participating employer was participating in this system on that date;

(b) the date the participating employer begins participating in this system if the firefighter service employee was employed by the participating employer on that date; or

(c) the date the firefighter service employee is hired to perform firefighter services for a participating employer, if the firefighter initially enters employment before July 1, 2011.

(2) (a) (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll the dual purpose employees in the system in which the greatest amount of time is actually worked.

(ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.

(b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.

(ii) The office may request documentation to verify the appropriateness of the transfer.

(3) (a) A person hired by a regularly constituted fire department on or after July 1, 1971, who does not perform firefighter service is not eligible for service credit in this system.

(b) The nonfirefighter service employee shall become a member of the system for which the nonfirefighter service employee qualifies for service credit.

(c) The service credit exclusion under this Subsection (3) may not be interpreted to prohibit the assignment of a [~~disabled or partially disabled~~] firefighter with a disability or partial disability to a nonfirefighter service position.

(d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for service credit in this system.

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(4) An allowance or other benefit may not be granted under this system that is based upon the same service for benefits received under some other system.

(5) Service as a volunteer firefighter is not eligible for service credit in this system.

(6) An employer that maintains a regularly constituted fire department is eligible to participate in this system.

(7) Beginning July 1, 2011, a person initially entering employment with a participating employer may not participate in this system.

Section 69. Section **49-16-502** is amended to read:

49-16-502. Death of active member in Division B -- Payment of benefits.

(1) If an active member of this system enrolled in Division B under Section 49-16-301 dies, benefits are payable as follows:

(a) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:

(i) If the member has accrued less than 20 years of firefighter service credit, the spouse at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's final average monthly salary.

(ii) If the member has accrued 20 or more years of firefighter service credit, the member shall be considered to have retired with an allowance calculated under Subsection 49-16-402 and the spouse at the time of death shall receive the death benefit payable to a spouse under Section 49-16-504.

(b) If the death is not classified by the office as a line-of-duty death, the benefits are payable as follows:

(i) If the member has accrued five or more years of firefighter service credit, the death is considered line-of-duty and the same benefits are payable as established under Subsection (1)(a).

(ii) If the member has accrued less than five years of firefighter service credit, the spouse at the time of death shall receive a refund of the member's contributions, plus 50% of the member's most recent 12 months compensation.

(c) If the member has accrued five or more years of firefighter service credit, the member's unmarried children until they reach age 21 or dependent unmarried [~~mentally or physically disabled~~] children with a mental or physical disability, shall receive a monthly

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allowance of \$75.

(2) (a) In the event of the death of the member and spouse, the spouse's benefits are equally divided and paid to each unmarried child until the child reaches age 21.

(b) The payments shall be made to the surviving parent or duly appointed guardian or as provided under Sections 49-11-609 and 49-11-610.

(3) If a benefit is not distributed under the previous subsections, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

(4) The combined monthly payments made to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 70. Section **49-16-504** is amended to read:

49-16-504. Benefits payable upon death of retired member.

(1) If a retiree who retired under either Division A or Division B dies, the retiree's spouse at the time of death shall receive an allowance equal to 75% of the allowance that was being paid to the retiree at the time of death.

(2) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 21 or dependent unmarried [~~mentally or physically disabled~~] children with a mental or physical disability, the children shall qualify for a benefit as prescribed under Subsection 49-16-502(1)(c) which is payable on the first day of the month following the month in which the retiree died.

Section 71. Section **49-16-602** is amended to read:

49-16-602. Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.

(1) A member of this system who applies and is qualified for disability retirement shall receive a disability retirement benefit until the earlier of:

(a) the date the member of this system [~~is no longer disabled~~] no longer has a disability;

(b) the date the member of this system has accumulated 20 years of firefighter service credit, including years earned while [~~disabled~~] the member of this system had a disability; or

(c) the date the member of this system has received disability retirement benefits for the following time periods:

(i) if the member is under age 60 on the date of disability, the disability retirement

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benefit is payable until age 65;

(ii) if the member is 60 or 61 years of age on the date of disability, the disability retirement benefit is payable for five years;

(iii) if the member is 62 or 63 years of age on the date of disability, the disability retirement benefit is payable for four years;

(iv) if the member is 64 or 65 years of age on the date of disability, the disability retirement benefit is payable for three years;

(v) if the member is 66, 67, or 68 years of age on the date of disability, the disability retirement benefit is payable for two years; and

(vi) if the member is 69 years of age or older on the date of disability, the disability retirement benefit is payable for one year.

(2) (a) (i) The [~~disability~~] retiree with a disability shall receive service credit in this system during the period of disability.

(ii) If the [~~disability~~] retiree with a disability is employed by a participating employer during the period of disability, the [~~disability~~] retiree with a disability may not receive service credit for that employment.

(b) The disability retirement shall be converted to a service retirement at the time the disability retirement benefits terminate.

(3) The office shall approve or disapprove applications for disability retirement benefits based upon:

(a) the evaluation and recommendations of one or more treating physicians along with medical records relating to the condition;

(b) the evaluation and recommendations of one or more independent physicians selected by the office; and

(c) receipt of documentation by the office from the participating employer that the member is mentally or physically unable to perform firefighter service.

(4) (a) A [~~disability~~] retiree with a disability who receives benefits under this section shall, upon request of the executive director, submit to a medical examination by one or more physicians as directed by the office.

(b) If, after an examination, the examiners report that the [~~disability~~] retiree with a disability is physically and mentally able and capable of resuming firefighter service

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employment, the [~~disability~~] retiree with a disability shall be reinstated by the participating employer for which the [~~disability~~] retiree with a disability last worked at the [~~disability retiree's~~] former classification and rank of the retiree with a disability, and the disability retirement benefit shall terminate.

(c) A [~~disability~~] retiree with a disability may not be required to submit to an examination under this Subsection (4) more than once every year.

(d) A [~~disability~~] retiree with a disability who returns to firefighter service employment with a participating employer in this system shall immediately begin accruing service credit that shall be added to that service credit that has been previously accrued, including service credit while disabled.

(5) A [~~disability~~] retiree with a disability is not subject to medical examinations after reaching age 55.

(6) Refusal or neglect of a member to submit to an examination as requested by the office either before or after a decision regarding disability benefits has been made is sufficient cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect continues for one year, the [~~member's or disability retiree's~~] rights of the member or retiree with a disability to disability retirement benefits may be revoked by the office.

(7) (a) A [~~disability~~] retiree with a disability who receives benefits under this part shall file a sworn statement with the office on or before March 15 of each year for the first five years a [~~disability~~] retiree with a disability receives benefits.

(b) The sworn statement shall indicate whether or not the [~~disability~~] retiree with a disability engaged in any employment during the preceding year and, if so, the amount of earnings received during the calendar year.

(c) If the total amount received in one year by a [~~disability~~] retiree with a disability for disability retirement benefits and gross earnings from other employment exceeds 125% of the [~~disability retiree's~~] final average salary of the retiree with a disability, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the [~~disability retiree's~~] final average salary of the retiree with a disability.

(d) (i) If a [~~disability~~] retiree with a disability refuses or neglects to file a sworn statement as required under this Subsection (7), the executive director may suspend payment of any and all benefits pending receipt of the statement.

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(ii) Upon filing the statement, the [~~disability retiree's~~] payments of the retiree with a disability shall be resumed.

(8) The disability retirement benefit shall be improved by the annual cost-of-living increase factor applied to retirees of the system that covered the firefighter service employee at the time of disability.

(9) A line of duty disability allowance paid on or after January 1, 2002, under Section 49-16-601 is exempt from taxation to the extent permitted under federal law.

(10) (a) An active member of this system with five or more years of firefighter service credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease, lung disease, or respiratory tract disease.

(b) An active member of this system who receives a line-of-duty disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract disease, and then returns to paid firefighter service, is not eligible for a line-of-duty death or disability benefit due to those diseases for two years after the member returned to paid firefighter service unless clear and convincing evidence is presented that the heart, lung, or respiratory tract disease was directly a result of firefighter service.

(11) Disability retirement benefits shall be considered an allowance for purposes of Section 49-11-701.

Section 72. Section **49-21-102** is amended to read:

49-21-102. Definitions.

As used in this chapter:

(1) "Date of disability" means the date on which a period of continuous disability commences, and may not commence on or before the last day of actual work.

~~[(3)]~~ (2) (a) "Eligible employee" means:

(i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102, public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this chapter, or the governor of the state; and

(ii) an employee who is covered by a retirement program offered by the Teachers' Insurance and Annuity Association of America, if the employee's employer provides coverage under this chapter; and

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(b) "Eligible employee" does not include any employee that is exempt from coverage under Section 49-21-201.

~~[(2)]~~ (3) "Elimination period" means the three months at the beginning of each continuous period of total disability for which no benefit will be paid. The elimination period begins on the nearest first day of the month from the date of disability. The elimination period may include a one-time trial return to work period of less than 15 consecutive calendar days.

(4) "Maximum benefit period" means the maximum period of time the monthly disability income benefit will be paid under Section 49-21-403 for any continuous period of total disability.

(5) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401.

(6) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.

(7) "Physician" means a licensed physician.

(8) "Regular monthly salary" means the amount certified by the participating employer as the monthly salary of the eligible employee, unless there is a discrepancy between the certified amount and the amount actually paid, in which case the office shall determine the regular monthly salary.

(9) "Regular occupation" means either the primary duties performed by the eligible employee for the 12 months preceding the date of disability, or a permanent assignment of duty to the eligible employee.

(10) "Rehabilitative employment" means any occupation or employment for wage or profit, for which the eligible employee is reasonably qualified to perform based on education, training, or experience.

(11) (a) "Total disability" ~~[or "totally disabled"]~~ means the complete inability, due to objective medical impairment, whether physical or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits.

(b) "Total disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability, based solely on physical objective medical impairment, to engage in any gainful occupation which is reasonable, considering the eligible

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employee's education, training, and experience.

Section 73. Section **49-21-401** is amended to read:

49-21-401. Disability benefits -- Application -- Eligibility.

(1) An eligible employee shall apply for long-term disability benefits under this chapter by:

(a) completing an application form prepared by the office;

(b) signing a consent form allowing the office access to the eligible employee's medical records; and

(c) providing any documentation or information reasonably requested by the office.

(2) (a) If an eligible employee is unable to apply on the employee's own behalf, the application may be made by a person who is:

(i) the attorney for an eligible employee; or

(ii) appointed as a conservator or guardian of the eligible employee.

(b) A person described in Subsection (2)(a), may not make an application for a deceased employee.

(3) Upon request by the office, the participating employer of the eligible employee shall provide to the office documentation and information concerning the eligible employee.

(4) The office shall review all relevant information and determine whether or not the eligible employee [~~is totally disabled~~] has a total disability.

(5) If the office determines that the eligible employee [~~is totally disabled~~] has a total disability due to accidental bodily injury or physical illness which is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to two-thirds of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(6) If the office determines that the eligible employee [~~is totally disabled~~] has a total disability due to psychiatric illness, the eligible employee shall receive:

(a) a maximum of two years of monthly disability benefits equal to two-thirds of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period;

(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses

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preauthorized by the office's consultants, paid during the period of monthly disability benefits; and

(c) payment of monthly disability benefits according to contractual provisions for a period not to exceed five years if the eligible employee is institutionalized due to psychiatric illness.

(7) If the office determines that the eligible employee [~~is totally disabled~~] has a total disability due to a physical injury resulting from external force or violence as a result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 100% of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(8) (a) Successive periods of disability are considered as a continuous period of disability if the period of disability:

(i) results from the same or related causes;

(ii) is separated by less than six months of continuous full-time work at the individual's usual place of employment; and

(iii) commences while the individual is an eligible employee covered by this chapter.

(b) The inability to work for a period of less than 15 consecutive calendar days is not considered as a period of disability.

(c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are considered as separate periods of disability.

(9) The office may, at any time, have any eligible employee claiming to have a disability examined by a physician chosen by the office to determine if the eligible employee [~~is totally disabled~~] has a total disability.

(10) A claim brought by an eligible employee for long-term disability benefits under the Public Employee's Long-Term Disability Program is barred if it is not commenced within one year from the eligible employee's date of disability, unless the office determines that under the surrounding facts and circumstances, the eligible employee's failure to comply with the time limitations was reasonable.

(11) Medical or psychiatric conditions which existed prior to eligibility may not be a basis for disability benefits until the eligible employee has had one year of continuous

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eligibility in the Public Employees Long-Term Disability Program.

(12) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is exempted from a system, or is otherwise ineligible for service credit.

(13) Regardless of any medical evidence provided by the employee to support the application for disability, an employee is not eligible for long-term disability benefits during any period in which the employee:

- (a) makes a claim that the employee is able to work; or
- (b) has a pending action in a court or before any state or local administrative body in which the employee has made a claim that the employee is able to work.

(14) Notwithstanding the provisions of Section 49-11-618, upon written request by an employer, information obtained under this part may, upon an order of a court or an administrative law judge, be released to an employer who is a party in an action under Subsection (13).

Section 74. Section **49-21-403** is amended to read:

49-21-403. Termination of disability benefits -- Calculation of retirement benefit.

(1) An eligible employee covered by this chapter and eligible for service credit under a system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, including an eligible employee who relinquishes rights to retirement benefits under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly disability benefit until the earlier of:

- (a) the date of the eligible employee's death;
- (b) the date the eligible employee ~~[is]~~ no longer ~~[disabled]~~ has a disability;
- (c) the date the eligible employee has accumulated:
 - (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement Act;
 - (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;
 - (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public

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Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory Retirement Act;

(iv) 35 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

(v) 25 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

(d) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:

(i) if the eligible employee is under age 60, the monthly disability benefit is payable until age 65;

(ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly disability benefit is payable for five years;

(iii) if the eligible employee is 62 or 63 years of age on the date of disability, the monthly disability benefit is payable for four years;

(iv) if the eligible employee is 64 or 65 years of age on the date of disability, the monthly disability benefit is payable for three years;

(v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the monthly disability benefit is payable for two years; and

(vi) if the eligible employee is 69 years of age or older on the date of disability, the monthly disability benefit is payable for one year.

(2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible for service credit under a system may retire under the requirements of the system which covered the eligible employee on the date of disability.

(b) The final average salary used in the calculation of the allowance shall be based on the annual rate of pay on the date of disability, improved by the annual cost-of-living increase factor applied to retirees of the system which covered the eligible employee on the date of disability.

(3) An eligible employee who is eligible for service credit in a system, but has relinquished rights to an allowance under Section 49-11-619, may receive the benefits the

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eligible employee would have received by being eligible for service credit in the system covering the eligible employee on the date of disability, except for the accrual of service credit, in accordance with this title.

(4) An eligible employee receiving a monthly disability benefit who has service credit from two or more systems may not combine service credits under Section 49-11-405 in qualifying for retirement, unless the eligible employee would receive a greater allowance by combining the service credits.

(5) A monthly disability benefit payable to an eligible employee who is not eligible for service credit under a system shall terminate at the earliest of:

- (a) the date the eligible employee would be eligible for an unreduced allowance;
- (b) the date the eligible employee has received a monthly disability benefit for the applicable time period as set forth in Subsection (1)(c); or
- (c) the date the eligible employee receives a reduced allowance.

Section 75. Section **49-22-402** is amended to read:

49-22-402. Defined contribution distributions for members with a disability.

For a person [~~who is disabled and~~] with a disability who receives contributions under Subsection 49-11-404(4)(b), the [~~disabled~~] member with a disability may begin receiving distributions from the defined contributions made by the participating employer on behalf of the [~~disabled~~] member with a disability when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Section 76. Section **53-3-807** is amended to read:

53-3-807. Expiration -- Address and name change -- Extension for a person with a disability.

(1) (a) An identification card issued on or after July 1, 2006, expires on the birth date of the applicant in the fifth year following the issuance of the identification card.

(b) A limited-term identification card expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the birth date of the applicant in the fifth year following the issuance of the limited-term identification card, whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the

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limited-term identification card was issued if there is no definite end to the individual's period of authorized stay.

(2) If a person has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the person shall within 10 days notify the division in a manner specified by the division of the person's new address.

(3) If a person has applied for and received an identification card and subsequently changes the person's name under Title 42, Chapter 1, Change of Name, the person:

(a) shall surrender the card to the division; and

(b) may apply for a new card in the person's new name by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;

and

(ii) paying the fee required under Section 53-3-105.

(4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is currently required to register as a sex offender under Section 77-27-21.5:

(i) the person's identification card expires annually on the next birth date of the cardholder, on and after July 1, 2006;

(ii) the person shall surrender the person's identification card to the division on or before the cardholder's next birth date beginning on July 1, 2006; and

(iii) the person may apply for an identification card with an expiration date identified in Subsection (8)[~~(b)~~] by:

(A) furnishing proper documentation to the division as provided in Section 53-3-804;

and

(B) paying the fee for an identification card required under Section 53-3-105.

(b) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is subsequently convicted of any offense listed in Subsection 77-27-21.5(1)(n), the person shall surrender the card to the division on the person's next birth date following the conviction and may apply for a new card with an expiration date identified in Subsection (8)[~~(b)~~] by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;

and

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(ii) paying the fee required under Section 53-3-105.

(c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b) because the person is in the custody of the Department of Corrections or Division of Juvenile Justice Services, confined in a correctional facility not operated by or under contract with the Department of Corrections, or committed to a state mental facility, shall comply with the provisions of Subsection (4)(a) or (b) within 10 days of being released from confinement.

(5) A person older than 21 years of age with a disability, as defined under the Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on an identification card for five years if the person with a disability or an agent of the person with a disability:

(a) requests that the division send the application form to obtain the extension or requests an application form in person at the division's offices;

(b) completes the application;

(c) certifies that the extension is for a person 21 years of age or older with a disability; and

(d) returns the application to the division together with the identification card fee required under Section 53-3-105.

(6) (a) (i) An identification card may only be extended once, except as prohibited under Subsection (6)(b).

(ii) After an extension an application for an identification card must be applied for in person at the division's offices.

(b) An identification card issued to a person required to register as a sex offender under Section 77-27-21.5 may not be extended.

(7) An identification card issued prior to July 1, 2006 to a person 65 years of age or older does not expire, but continues in effect until the death of that person.

(8) Notwithstanding the provisions of this section, an identification card expires on the birth date of the applicant in the first year following the year that the identification card was issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

(9) A person who knowingly fails to surrender an identification card under Subsection (4) is guilty of a class A misdemeanor.

Section 77. Section **53-10-208.1** is amended to read:

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

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

- (1) all dispositions of criminal matters, including:
 - (a) guilty pleas;
 - (b) convictions;
 - (c) dismissals;
 - (d) acquittals;
 - (e) pleas held in abeyance;
 - (f) judgments of not guilty by reason of insanity for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons;
 - (g) judgments of guilty [~~and mentally ill~~] with a mental illness;
 - (h) finding of mental incompetence to stand trial for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons; or
 - (i) probations granted; and
- (2) orders of civil commitment under the terms of Section 62A-15-631;
- (3) the issuance, recall, cancellation, or modification of all warrants of arrest or

commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and

- (4) protective orders issued after notice and hearing, pursuant to:
 - (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 - (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

Section 78. Section **53A-1a-704** is amended to read:

53A-1a-704. Scholarship program created -- Qualifications.

(1) The Carson Smith Scholarship Program is created to award scholarships to students with disabilities to attend a private school.

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(2) To qualify for a scholarship:

(a) the student's custodial parent or legal guardian shall reside within Utah;

(b) the student shall have one or more of the following disabilities:

(i) ~~[mental retardation]~~ an intellectual disability;

(ii) a hearing impairment;

(iii) a speech or language impairment;

(iv) a visual impairment;

(v) a serious emotional disturbance;

(vi) an orthopedic impairment;

(vii) autism;

(viii) traumatic brain injury;

(ix) other health impairment;

(x) specific learning disabilities; or

(xi) a developmental delay, provided the student is at least five years of age, pursuant to Subsection (2)(c), and is younger than eight years of age;

(c) the student shall be at least five years of age before September 2 of the year in which admission to a private school is sought and under 19 years of age on the last day of the school year as determined by the private school, or, if the individual has not graduated from high school, will be under 22 years of age on the last day of the school year as determined by the private school; and

(d) except as provided in Subsection (3), the student shall:

(i) be enrolled in a Utah public school in the school year prior to the school year the student will be enrolled in a private school;

(ii) have an IEP; and

(iii) have obtained acceptance for admission to an eligible private school.

(3) The requirements of Subsection (2)(d) do not apply in the following circumstances:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty:

(i) that the student has a disability listed in Subsection (2)(b) and would qualify for special education services, if enrolled in a public school; and

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(ii) for the purpose of establishing the scholarship amount, the appropriate level of special education services which should be provided to the student.

(4) (a) To receive a scholarship, the parent of a student shall submit an application for the scholarship to the school district within which the student is enrolled:

(i) at least 60 days before the date of the first scholarship payment; and

(ii) that contains an acknowledgment by the parent that the selected school is qualified and capable of providing the level of special education services required for the student.

(b) The board may waive the 60-day application deadline.

(5) (a) The scholarship application form shall contain the following statement:

"I acknowledge that:

(1) A private school may not provide the same level of special education services that are provided in a public school;

(2) I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship;

(3) Acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

(4) My child may return to a public school at any time."

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student.

(c) Acceptance of a scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(d) The creation of the scholarship program or granting of a scholarship does not:

(i) imply that a public school did not provide a free and appropriate public education for a student; or

(ii) constitute a waiver or admission by the state.

(6) (a) A scholarship shall remain in force for three years.

(b) A scholarship shall be extended for an additional three years, if:

(i) the student is evaluated by an assessment team; and

(ii) the assessment team determines that the student would qualify for special education

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services, if enrolled in a public school.

(c) The assessment team shall determine the appropriate level of special education services which should be provided to the student for the purpose of setting the scholarship amount.

(d) A scholarship shall be extended for successive three-year periods as provided in Subsections (6)(a) and (b):

- (i) until the student graduates from high school; or
- (ii) if the student does not graduate from high school, until the student is age 22.

(7) A student's parent, at any time, may remove the student from a private school and place the student in another eligible private school and retain the scholarship.

(8) A scholarship student may not participate in a dual enrollment program pursuant to Section 53A-11-102.5.

(9) The parents or guardians of a scholarship student have the authority to choose the private school that will best serve the interests and educational needs of that student, which may be a sectarian or nonsectarian school, and to direct the scholarship resources available for that student solely as a result of their genuine and independent private choices.

(10) (a) A school district or charter school shall notify in writing the parents or guardians of students enrolled in the school district or charter school who have an IEP of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(b) The notice described under Subsection (10)(a) shall:

- (i) be provided no later than 30 days after the student initially qualifies for an IEP;
- (ii) be provided annually no later than February 1 to all students who have an IEP; and
- (iii) include the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

(c) A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program on the school district's or school's website, if the school district or school has one.

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Section 79. Section **53A-3-204** is amended to read:

53A-3-204. Duties of president.

(1) The president of each local school board shall preside at all meetings of the board, appoint all committees, and sign all warrants ordered by the board to be drawn upon the business administrator for school money.

(2) If the president is absent or [~~disabled~~] acquires a disability, these duties are performed by the vice president.

Section 80. Section **53A-9-103** is amended to read:

53A-9-103. Authorized components.

Career ladders may include the following components:

(1) (a) An extended contract year for teachers, providing for additional paid nonteaching days beyond the regular school year for curriculum development and other professional development activities.

(b) School boards may approve individual exceptions to the extended year contract.

(2) At the option of the local school board, an extended contract year for teachers, providing for additional paid workdays beyond the regular school year for teaching assignments in programs for:

(a) summer school[;];

(b) remedial[~~disabled~~,] education;

(c) students with a disability;

(d) specialized[;] education;

(e) applied technology[;];

(f) gifted and talented[;]; and

(g) adult education [~~programs~~].

(3) A fair and consistent procedure:

(a) for selecting teachers who will be given additional responsibilities; and

(b) which incorporates clearly stated job descriptions and qualifications for each level on the career ladder.

(4) (a) A program of differentiated staffing that provides additional compensation and, as appropriate, additional extensions of the contract year, for those who assume additional instruction-related responsibilities such as:

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- (i) assisting students and mentoring beginning teachers;
- (ii) curriculum and lesson plan development;
- (iii) helping established teachers improve their teaching skills;
- (iv) volunteer training;
- (v) planning;
- (vi) facilities and productivity improvements; and
- (vii) educational assignments directed at establishing positive relationships with the community, businesses, and parents.

(b) Administrative and extracurricular activities are not considered additional instruction-related activities under this Subsection (4).

(5) (a) A well defined program of evaluation and mentoring for beginning teachers, consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), designed to assist those teachers during provisional years of teaching to acquire and demonstrate the skills required of capable, successful teachers.

(b) Continuation in teaching from year to year shall be contingent upon satisfactory teaching performance.

(6) A clear and concise explanation of the evaluation system components, including the respective roles of parents, teachers, administrators, and the school board in the development of the evaluation system and provisions for frequent, comprehensive evaluations of teachers with less than three years' teaching experience and periodic evaluations of other teachers consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

(7) (a) A program of advancement on the career ladder contingent upon effective teaching performance, evidence of which may include formal evaluation and assessment of student progress.

(b) Student progress shall play a significant role in teacher evaluation.

(c) Other criteria may include formal preparation and successful teaching experience.

(8) An assessment of implementation costs.

(9) A plan for periodic review of the career ladder, including the makeup of the reviewing entity, procedures to be followed during review, and the time schedule for the review.

Section 81. Section **53A-15-205** is amended to read:

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53A-15-205. Disability Determination Services Advisory Council -- Membership -- Duties -- Requirements for DDDS.

(1) As used in this section, "council" means the Disability Determination Services Advisory Council created in Subsection (2).

(2) There is created the Disability Determination Services Advisory Council to act as an advisory council to the State Board of Education regarding the Division of Disability Determination Services (DDDS) established under Chapter 24, Part 5, Division of Disability Determination Services.

(3) The council is composed of the following members:

(a) the administrator of DDDS;

(b) a representative of the United States Department of Health and Human Services, Social Security Administration, appointed by the board; and

(c) nine persons, appointed by the board in accordance with Subsections (5) and (6), who represent a cross section of:

(i) persons with disabilities;

(ii) advocates for persons with disabilities;

(iii) health care providers;

(iv) representatives of allied state and local agencies; and

(v) representatives of the general public.

(4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting members of the council.

(5) In appointing the members described in Subsection (3)(c), the board shall:

(a) solicit nominations from organizations and agencies that represent the interests of members described in that subsection; and

(b) make every effort to create a balance in terms of geography, sex, race, ethnicity, and type of both mental and physical disabilities.

(6) (a) In making initial appointments of members described in Subsection (3)(c), the board shall appoint three members for two-year terms, three members for four-year terms, and three members for six-year terms. All subsequent appointments are for four years.

(b) The board shall fill any vacancy that occurs on the council for any reason by appointing a person for the unexpired term of the vacated member.

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(c) Council members are eligible for one reappointment and serve until their successors are appointed.

(7) Five voting members of the council constitute a quorum. The action of a majority of a quorum represents the action of the council.

(8) Members of the council serve without compensation but may be reimbursed for expenses incurred in the performance of their official duties.

(9) (a) The council shall annually elect a chairperson from among the membership described, and shall adopt bylaws governing its activities.

(b) The chairperson shall set the meeting agenda.

(10) The council shall:

(a) advise DDDS and the Social Security Administration regarding its practices and policies on the determination of claims for Social Security disability benefits;

(b) participate in the development of new internal practices and procedures of DDDS and policies of the Social Security Administration regarding the evaluation of disability claims;

(c) recommend changes to practices and policies to ensure that DDDS is responsive to ~~[disabled]~~ individuals with a disability;

(d) review the DDDS budget to ensure that it is adequate to effectively evaluate disability claims and to meet the needs of persons with disabilities who have claims pending with DDDS; and

(e) review and recommend changes to policies and practices of allied state and federal agencies, health care providers, and private community organizations.

(11) The council shall annually report to the board, the governor, and the Legislative Health and Human Services Interim Committee regarding its activities.

(12) (a) To assist the council in its duties, DDDS shall provide the necessary staff assistance to enable the council to make timely and effective recommendations.

(b) Staff assistance may include:

(i) distributing meeting agendas;

(ii) advising the chairpersons of the council regarding relevant items for council discussion; and

(iii) providing reports, documents, budgets, memorandums, statutes, and regulations regarding the management of DDDS.

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(c) Staff assistance shall include maintaining minutes.

Section 82. Section **53A-17a-112** is amended to read:

53A-17a-112. Preschool special education appropriation -- Extended year program appropriation -- Appropriation for special education programs in state institutions.

(1) (a) Money appropriated to the State Board of Education for the preschool special education program shall be allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages three through five.

(b) The money shall be distributed on the basis of [~~a school district's previous year December 1 disabled preschool child count~~] the school district's count of preschool children with a disability for December 1 of the previous year, as mandated by federal law.

(2) Money appropriated for the extended school year program for [~~the severely disabled~~] children with a severe disability shall be limited to students with severe disabilities with education program goals identifying significant regression and recoupment disability as approved by the State Board of Education.

(3) (a) Money appropriated for self-contained regular special education programs may not be used to supplement other school programs.

(b) Money in any of the other restricted line item appropriations may not be reduced more than 2% to be used for purposes other than those specified by the appropriation, unless otherwise provided by law.

(4) (a) The State Board of Education shall compute preschool funding by a factor of 1.47 times the current December 1 child count of eligible preschool aged three, four, and five-year-olds times the WPU value, limited to 8% growth over the prior year December 1 count.

(b) The board shall develop guidelines to implement the funding formula for preschool special education, and establish prevalence limits for distribution of the money.

Section 83. Section **53A-17a-127** is amended to read:

53A-17a-127. Eligibility for state-supported transportation -- Approved bus routes -- Additional local tax.

(1) A student eligible for state-supported transportation means:

(a) a student enrolled in kindergarten through grade six who lives at least 1-1/2 miles

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from school;

(b) a student enrolled in grades seven through 12 who lives at least two miles from school; and

(c) a student enrolled in a special program offered by a school district and approved by the State Board of Education for trainable, motor, [~~multiple-disabled~~] multiple-disability, or other students with severe disabilities who are incapable of walking to school or where it is unsafe for students to walk because of their disabling condition, without reference to distance from school.

(2) If a school district implements double sessions as an alternative to new building construction, with the approval of the State Board of Education, those affected elementary school students residing less than 1-1/2 miles from school may be transported one way to or from school because of safety factors relating to darkness or other hazardous conditions as determined by the local school board.

(3) (a) The State Board of Education shall distribute transportation money to school districts based on:

- (i) an allowance per mile for approved bus routes;
- (ii) an allowance per hour for approved bus routes; and
- (iii) a minimum allocation for each school district eligible for transportation funding.

(b) The State Board of Education shall distribute appropriated transportation funds based on the prior year's eligible transportation costs as legally reported under Subsection 53A-17a-126(3).

(c) The State Board of Education shall annually review the allowance per mile and the allowance per hour and adjust the allowances to reflect current economic conditions.

(4) (a) Approved bus routes for funding purposes shall be determined on fall data collected by October 1.

(b) Approved route funding shall be determined on the basis of the most efficient and economic routes.

(5) A Transportation Advisory Committee with representation from local school superintendents, business officials, school district transportation supervisors, and the state superintendent's staff shall serve as a review committee for addressing school transportation needs, including recommended approved bus routes.

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(6) (a) A local school board may provide for the transportation of students regardless of the distance from school, from:

- (i) general funds of the district; and
- (ii) a tax rate not to exceed .0003 per dollar of taxable value imposed on the district.

(b) A local school board may use revenue from the tax described in Subsection (6)(a)(ii) to pay for transporting students and for the replacement of school buses.

(c) (i) If a local school board levies a tax under Subsection (6)(a)(ii) of at least .0002, the state may contribute an amount not to exceed 85% of the state average cost per mile, contingent upon the Legislature appropriating funds for a state contribution.

(ii) The state superintendent's staff shall distribute the state contribution according to rules enacted by the State Board of Education.

(d) (i) The amount of state guarantee money which a school district would otherwise be entitled to receive under Subsection (6)(c) may not be reduced for the sole reason that the district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation.

(ii) Subsection (6)(d)(i) applies for a period of two years following the change in the certified tax rate.

Section 84. Section **53B-23-101** is amended to read:

CHAPTER 23. INSTRUCTIONAL MATERIALS FOR STUDENTS WITH A DISABILITY ACT

53B-23-101. Title.

This chapter is known as the "Instructional Materials for [~~Disabled~~] Students with a Disability Act."

Section 85. Section **54-1-1.6** is amended to read:

54-1-1.6. Pro tempore commissioner -- Appointment -- Qualifications.

(1) If a commissioner [~~is temporarily disabled~~] has a temporary disability or is disqualified from sitting as a commissioner, the governor may appoint a commissioner pro tempore according to the procedures and requirements of Section 67-1-1.5.

(2) Any person appointed as a commissioner pro tempore shall possess the qualifications required for public service commissioners in Section 54-1-1.5 and have previous utility regulatory experience or other comparable professional experience.

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(3) The governor may appoint a retired or resigned public service commissioner as a commissioner pro tempore in order to render findings, orders, or decisions on matters which the retired or resigned commissioner had fully heard before the commissioner's retirement or resignation.

Section 86. Section **57-21-5** is amended to read:

57-21-5. Discriminatory practices enumerated -- Protected persons, classes enumerated.

(1) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, or disability:

(a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person;

(b) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling; or

(c) represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available.

(2) It is a discriminatory housing practice to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, or disability, or expresses any intent to make any such preference, limitation, or discrimination.

(3) It is a discriminatory housing practice to induce or attempt to induce, for profit, any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular race, color, religion, sex, national origin, familial status, source of income, or disability.

(4) A discriminatory housing practice includes:

(a) a refusal to permit, at the expense of the ~~[disabled]~~ person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in

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the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises, when reasonable, to the condition that existed before the modification, reasonable wear and tear excepted;

(b) a refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; and

(c) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

(i) the dwellings have at least one building entrance on an accessible route, unless it is impracticable to have one because of the terrain or unusual characteristics of the site; and

(ii) with respect to dwellings with a building entrance on an accessible route:

(A) the public use and common use portions of the dwelling are readily accessible to and usable by ~~[disabled persons]~~ a person with a disability;

(B) all the doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by ~~[disabled persons in wheelchairs]~~ a person with a disability who is in a wheelchair; and

(C) all premises within these dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in the bathroom walls to allow later installation of grab bars; and

(IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver about and use the space.

(5) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, or disability based upon a person's association with another person.

Section 87. Section **58-15-2** is amended to read:

58-15-2. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

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(1) "Administrator" means a person who is charged with the general administration of a health facility, regardless of whether that person has an ownership interest in the facility and whether his functions and duties are shared with one or more persons.

(2) "Board" means the Health Facility Administrators Licensing Board created in Section 58-15-3.

(3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability.

(4) "Intermediate care facility" means an institution which provides, on a regular basis, health care and services to persons who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health care and services in addition to room and board.

(5) "Intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability" means an institution which provides, on a regular basis, health-related care and service to mentally retarded individuals or persons with related conditions, who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health-related care and services above the need for room and board.

(6) "Skilled nursing facility" means an institution primarily providing inpatients with skilled nursing care and related services on a continuing basis for patients who require mental, medical, or nursing care, or service for the rehabilitation of ~~[injured, disabled, or sick persons]~~ an injured person, a sick person, or a person with a disability.

(7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) intentionally filing a false report or record, intentionally failing to file a report or record required by state or federal law, or wilfully impeding or obstructing the filing of a required report. These reports or records only include those which are signed in the capacity of a licensed health facility administrator; and

(b) acting in a manner inconsistent with the health and safety of the patients of the health facility in which he is the administrator.

Section 88. Section **58-15-3** is amended to read:

58-15-3. Health Facility Administrators Licensing Board.

(1) There is created a Health Facility Administrators Licensing Board consisting of one

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administrator from a skilled nursing facility, two administrators from intermediate care facilities, one administrator from an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability, and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. The board, in collaboration with the division, may establish continuing education requirements by rule. Board members may not receive compensation for their involvement in continuing education programs.

Section 89. Section **58-17b-503** is amended to read:

58-17b-503. Exception to unprofessional conduct.

(1) For purposes of this section:

(a) ~~["ICFMR"]~~ "Licensed intermediate care facility for people with an intellectual disability" means an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability that is licensed as a nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Nursing care facility" has the same definition as in Section 26-21-2.

(c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package with identification that indicates the lot number and expiration date for the drug.

(2) Notwithstanding the provisions of Subsection 58-17b-502(5), a pharmacist may accept back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy if:

(a) the drug was prescribed to a patient in a nursing care facility, ~~[an ICFMR]~~ a licensed intermediate care facility for people with an intellectual disability, or state prison facility, county jail, or state hospital;

(b) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;

(c) the drug is in a unit pack or in the manufacturer's sealed container;

(d) the drug was returned to the original dispensing pharmacy;

(e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern; and

(f) accepting back and redistribution of the drug complies with Federal Food and Drug

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Administration and Drug Enforcement Administration regulations.

Section 90. Section **58-17b-701** is amended to read:

58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action and procedures.

(1) As used in this section:

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

(b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that the pharmacist [~~is mentally ill~~] has a mental illness and is unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.

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

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

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

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

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

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

(i) the pharmacist [~~is mentally ill or~~] has a mental illness, is incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

(5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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

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

(b) the pharmacist is qualified to have the pharmacist's licensure to practice under this chapter restored completely or in part.

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Section 91. Section **58-26a-307** is amended to read:

58-26a-307. CPA emeritus status -- Renewal of license.

(1) A person currently licensed as a certified public accountant may, on any renewal date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus registration if:

- (a) (i) the licensee is at least 60 years of age as of the date of renewal;
- (ii) the licensee [~~is disabled~~] has a disability; or
- (iii) the board finds other good cause for believing that the licensee will not return to the practice of public accountancy;
- (b) the licensee makes an application for transfer of status and registration and pays a registration fee determined by the department under Section 63J-1-504;
- (c) the licensee, on application for transfer, certifies that the licensee will not engage in the practice of public accountancy while in the status of CPA emeritus registration; and
- (d) the licensee is in good standing as a CPA and not subject to any order of revocation, suspension, or probation.

(2) Each CPA emeritus registration shall be issued in accordance with a two-year renewal cycle established by rule.

(3) CPA emeritus registrants may not engage in the practice of public accountancy.

(4) CPA emeritus registrants are not required to fulfill the continuing professional education or peer review provisions of this chapter.

(5) Each CPA emeritus registrant is responsible for renewing the registration, according to procedures that the division establishes by rule in collaboration with the board in accordance with Section 58-1-308.

(6) A CPA emeritus registrant may reinstate the CPA license by:

- (a) submitting an application in a form prescribed by the division;
- (b) paying a fee determined by the department under Section 63J-1-504; and
- (c) showing evidence of having completed the continuing professional education requirement established by rule.

Section 92. Section **58-31b-102** is amended to read:

58-31b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

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(1) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Applicant" means a person who applies for licensure or certification under this chapter by submitting a completed application for licensure or certification and the required fees to the department.

(3) "Approved education program" means a nursing education program that meets the minimum standards for educational programs established under this chapter and by division rule in collaboration with the board.

(4) "Board" means the Board of Nursing created in Section 58-31b-201.

(5) "Consultation and referral plan" means a written plan jointly developed by an advanced practice registered nurse and a consulting physician that permits the advanced practice registered nurse to prescribe schedule II-III controlled substances in consultation with the consulting physician.

(6) "Consulting physician" means a physician and surgeon or osteopathic physician and surgeon licensed in accordance with this title who has agreed to consult with an advanced practice registered nurse with a controlled substance license, a DEA registration number, and who will be prescribing schedule II-III controlled substances.

(7) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to the effective execution and management of health care.

(8) "Examinee" means a person who applies to take or does take any examination required under this chapter for licensure.

(9) "Licensee" means a person who is licensed or certified under this chapter.

(10) "Long-term care facility" means any of the following facilities licensed by the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act:

- (a) a nursing care facility;
- (b) a small health care facility;
- (c) an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual

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disability:

(d) an assisted living facility Type I or II; or

(e) a designated swing bed unit in a general hospital.

(11) "Medication aide certified" means a certified nurse aide who:

(a) has a minimum of 2,000 hours experience working as a certified nurse aide;

(b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and

(c) is certified by the division as a medication aide certified.

(12) (a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by administrative rule, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who:

(i) is ill, injured, infirm, [developmentally or physically disabled, mentally disabled, or mentally retarded, and who] has a physical, mental, developmental, or intellectual disability; and

(ii) is in a regulated long-term care facility.

(b) "Practice as a medication aide certified":

(i) includes:

(A) providing direct personal assistance or care; and

(B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule; and

(ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability to self administer a medication, as regulated by the Department of Health by administrative rule.

(13) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:

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- (a) maintenance and promotion of health and prevention of disease;
- (b) diagnosis, treatment, correction, consultation, and referral for common health problems;
- (c) prescription or administration of prescription drugs or devices including:
 - (i) local anesthesia;
 - (ii) schedule IV-V controlled substances; and
 - (iii) schedule II-III controlled substances in accordance with a consultation and referral plan; or
- (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:
 - (i) preanesthesia preparation and evaluation including:
 - (A) performing a preanesthetic assessment of the patient;
 - (B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and
 - (C) selecting, ordering, or administering appropriate medications;
 - (ii) anesthesia induction, maintenance, and emergence, including:
 - (A) selecting and initiating the planned anesthetic technique;
 - (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - (C) administering general, regional, and local anesthesia;
 - (iii) postanesthesia follow-up care, including:
 - (A) evaluating the patient's response to anesthesia and implementing corrective actions; and
 - (B) selecting, ordering, or administering the medications and studies listed in Subsection (13)(d); and
 - (iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:
 - (A) emergency airway management;
 - (B) advanced cardiac life support; and
 - (C) the establishment of peripheral, central, and arterial invasive lines; and
 - (v) for purposes of Subsection (13)(d), "upon the request of a licensed health care

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professional":

(A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and

(B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to enter into a consultation and referral plan or obtain additional authority to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

(14) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment. The practice of nursing requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences, and includes:

- (a) initiating and maintaining comfort measures;
- (b) promoting and supporting human functions and responses;
- (c) establishing an environment conducive to well-being;
- (d) providing health counseling and teaching;
- (e) collaborating with health care professionals on aspects of the health care regimen;
- (f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and
- (g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.

(15) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by rule and as provided in this Subsection (15) by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:

- (a) contributing to the assessment of the health status of individuals and groups;
- (b) participating in the development and modification of the strategy of care;
- (c) implementing appropriate aspects of the strategy of care;
- (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and

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(e) participating in the evaluation of responses to interventions.

(16) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (16) by a person licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by rule. Registered nursing acts include:

(a) assessing the health status of individuals and groups;

(b) identifying health care needs;

(c) establishing goals to meet identified health care needs;

(d) planning a strategy of care;

(e) prescribing nursing interventions to implement the strategy of care;

(f) implementing the strategy of care;

(g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;

(h) evaluating responses to interventions;

(i) teaching the theory and practice of nursing; and

(j) managing and supervising the practice of nursing.

(17) "Routine medications":

(a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and

(b) is limited to medications that are administered by the following routes:

(i) oral;

(ii) sublingual;

(iii) buccal;

(iv) eye;

(v) ear;

(vi) nasal;

(vii) rectal;

(viii) vaginal;

(ix) skin ointments, topical including patches and transdermal;

(x) premeasured medication delivered by aerosol/nebulizer; and

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(xi) medications delivered by metered hand-held inhalers.

(18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

(19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the standards of the profession.

(20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

Section 93. Section **58-31b-401** is amended to read:

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

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

(2) If a court of competent jurisdiction determines a nurse is an incapacitated person as defined in Section 75-1-201 or that the nurse [~~is mentally ill~~] has a mental illness, as defined in Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse in writing of the suspension.

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

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

(4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives

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consent to:

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

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

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

(i) the nurse [~~is mentally ill or~~ has a mental illness], is incapacitated, or otherwise unable to practice nursing with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse and was not related directly to the illness or incapacity of the nurse.

(5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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

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

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nursing; and

(b) the nurse is qualified to have the nurse's license to practice under this chapter restored completely or in part.

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

(8) For purposes of this section:

(a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

(b) any terms or conditions applied to the word "nurse" in this section also apply to a medication aide certified.

Section 94. Section **58-60-114** is amended to read:

58-60-114. Confidentiality -- Exemptions.

(1) A mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) the authorized agent of a client or patient.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) ~~[he]~~ the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of ~~[Disabled]~~ a Vulnerable Adult;

(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard

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that authorizes or requires the disclosure.

Section 95. Section **58-60-509** is amended to read:

58-60-509. Confidentiality -- Exemptions.

(1) A licensee under this part may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) the authorized agent of a client or patient.

(2) A licensee under this part is not subject to Subsection (1) if:

(a) [~~he~~] the licensee is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable [~~Adults~~] Adult;

(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section 26-6-6;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 96. Section **58-61-602** is amended to read:

58-61-602. Confidentiality -- Exemptions.

(1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) the authorized agent of a client or patient.

(2) A psychologist under this chapter is not subject to Subsection (1) if:

(a) [~~he~~] the psychologist is permitted or required by state or federal law, rule,

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regulation, or order to report or disclose any confidential communication, including:

- (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of ~~[Disabled]~~ a Vulnerable Adult;
- (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
- (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
- (iv) reporting of a communicable disease as required under Section 26-6-6;
- (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
- (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 97. Section ~~58-67-601~~ is amended to read:

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

(1) As used in this section:

- (a) "Incapacitated person" ~~[has the same definition as]~~ is as defined in Section 75-1-201.
- (b) ~~["Mentally ill" has the same definition as]~~ "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician ~~[is mentally ill]~~ has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to ~~[be mentally ill]~~ have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with

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the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

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

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

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

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

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

(i) the physician [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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patients or the general public.

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

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

(b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Section 98. Section **58-68-601** is amended to read:

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

(1) As used in this section:

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

(b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines an osteopathic physician and surgeon is an incapacitated person or that the physician or surgeon [~~is mentally ill~~] has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

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

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practice of medicine.

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

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

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

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

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

(i) the osteopathic physician and surgeon [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the osteopathic physician and surgeon and was not related directly to the illness or incapacity of the osteopathic physician and surgeon.

(5) (a) An osteopathic physician and surgeon whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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physician and surgeon's patients or the general public.

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

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

(b) the physician or surgeon is qualified to have the physician's or surgeon's license to practice under this chapter restored completely or in part.

Section 99. Section **58-69-601** is amended to read:

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

(1) As used in this section:

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

(b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that the dentist or hygienist [~~is mentally ill~~] has a mental illness and is unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or dental hygienist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

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

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dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

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

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

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

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

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

(i) the dentist or dental hygienist [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.

(5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists

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for the continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's patients or the general public.

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

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

(b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's licensure to practice under this chapter restored completely or in part.

Section 100. Section **58-71-601** is amended to read:

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

(1) As used in this section:

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

(b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines a naturopathic physician is an incapacitated person or that the physician [~~is mentally ill and~~] has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the naturopathic physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the naturopathic physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a naturopathic physician, who is not determined judicially to be an incapacitated person or to [~~be mentally ill~~] have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the naturopathic physician

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with a notice of hearing on the sole issue of the capacity of the naturopathic physician to competently and safely engage in the practice of medicine.

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

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

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

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

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

(i) the naturopathic physician [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the naturopathic physician and was not related directly to the illness or incapacity of the naturopathic physician.

(5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

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

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physician's patients or the general public.

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

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

(b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Section 101. Section **58-73-401** is amended to read:

58-73-401. Grounds for denial of license -- Disciplinary proceedings -- Limitation on division actions.

(1) Grounds for the following are in accordance with Section 58-1-401:

(a) refusing to issue a license to an applicant;

(b) refusing to renew the license of a licensee;

(c) revoking, suspending, restricting, or placing on probation the license of a licensee;

(d) issuing a public or private reprimand to a licensee; and

(e) issuing a cease and desist order.

(2) If a court of competent jurisdiction determines a chiropractic physician is incompetent, mentally incompetent, incapable, or [~~mentally ill~~] has a mental illness, the director shall suspend the license of that chiropractic physician, even if an appeal is pending.

(3) (a) If it appears to the board there is reasonable cause to believe a chiropractic physician who has not been judicially determined to be incompetent, mentally incompetent, incapable, or [~~mentally ill~~] to have a mental illness is unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition, a petition shall be served upon that chiropractic physician for a hearing on the sole issue of the capacity of the chiropractic physician to conduct properly the practice of the chiropractic physician.

(b) Every chiropractic physician licensed by this state is considered to have:

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(i) agreed to submit to a mental or physical examination upon receipt of a written direction given by the division with the approval of the board; and

(ii) waived all objections to the admissibility of the examining chiropractic physician's or other practitioner's testimony or examination reports on the ground they constitute a privileged communication.

(c) Failure of a chiropractic physician to submit to an examination under Subsection (3)(b) when directed by the division, unless the failure was due to circumstances beyond his control, constitutes grounds for immediate suspension of the chiropractic physician's license and an order of suspension of the license may be entered by the division without the taking of testimony or the presentation of evidence.

(d) A chiropractic physician whose license is suspended under this section shall, at reasonable intervals, be afforded the opportunity to demonstrate ~~[he]~~ the chiropractic physician can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(e) Neither the proceedings of the board nor the action taken by it under this section may be used against a chiropractic physician in any other proceedings.

(4) The terms of revocation, suspension, or probation under this chapter may include:

(a) revoking the license to practice either permanently or with a stated date before which the individual may not apply for licensure;

(b) suspending, limiting, or restricting the license to practice chiropractic for up to five years, including limiting the practice of the person to, or excluding from the person's practice, one or more specific branches of medicine, including any limitation on practice within the specified branches;

(c) requiring the license holder to submit to care, counseling, or treatment by physicians approved by or designated by the board, as a condition for licensure;

(d) requiring the license holder to participate in a program of education prescribed by the board;

(e) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time; or

(f) other appropriate terms and conditions determined by the division in collaboration with the board to be necessary to protect the public health, safety, or welfare.

Section 102. Section **59-2-1101** is amended to read:

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59-2-1101. Exemption of certain property -- Proportional payments for certain property -- County legislative body authority to adopt rules or ordinances.

(1) For purposes of this section:

(a) "exclusive use exemption" means a property tax exemption under Subsection (3)(d), for property owned by a nonprofit entity that is used exclusively for religious, charitable, or educational purposes;

(b) "government exemption" means a property tax exemption provided under Subsection (3)(a), (b), or (c); and

(c) "tax relief" means an exemption, deferral, or abatement that is authorized by this part.

(2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

(i) the claimant is a federal, state, or political subdivision entity described in Subsection (3)(a), (b), or (c); or

(ii) pursuant to Subsection (3)(d):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes.

(c) Notwithstanding Subsection (2)(a), a claimant may be allowed a veteran's exemption in accordance with Sections 59-2-1104 and 59-2-1105 regardless of whether the claimant is the owner of the property as of January 1 of the year the exemption is claimed if the claimant is:

(i) the unmarried surviving spouse of:

(A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104; or

(ii) a minor orphan of:

(A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104.

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(3) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of:

(i) the state;

(ii) school districts; and

(iii) public libraries;

(c) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:

(i) counties;

(ii) cities;

(iii) towns;

(iv) local districts;

(v) special service districts; and

(vi) all other political subdivisions of the state;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery;

(g) intangible property; and

(h) the ownership interest of an out-of-state public agency, as defined in Section 11-13-103:

(i) if that ownership interest is in property providing additional project capacity, as defined in Section 11-13-103; and

(ii) on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or a government exemption ceases to qualify for the exemption because of a change in the ownership of the property:

(a) the new owner of the property shall pay a proportional tax based upon the period of time:

(i) beginning on the day that the new owner acquired the property; and

(ii) ending on the last day of the calendar year during which the new owner acquired

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the property; and

(b) the new owner of the property and the person from whom the new owner acquires the property shall notify the county assessor, in writing, of the change in ownership of the property within 30 days from the day that the new owner acquires the property.

(5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection (4)(a):

(a) is subject to any exclusive use exemption or government exemption that the property is entitled to under the new ownership of the property; and

(b) applies only to property that is acquired after December 31, 2005.

(6) A county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 103. Section **59-2-1104** is amended to read:

59-2-1104. Definitions -- Veteran's exemption -- Amount of veteran's exemption.

(1) As used in this section and Section 59-2-1105:

(a) "Adjusted taxable value limit" means:

(i) for the year 2005, \$200,000; and

(ii) for each year after 2005, the amount of the adjusted taxable value limit for the previous year, plus an amount calculated by multiplying the amount of the adjusted taxable value limit for the previous year by the actual percent change in the Consumer Price Index during the previous calendar year[⁷].

(b) "Claimant" means:

(i) a ~~disabled~~ veteran with a disability who files an application under Section 59-2-1105 for a veteran's exemption;

(ii) the unmarried surviving spouse:

(A) of a:

(I) deceased ~~disabled~~ veteran with a disability; or

(II) veteran who was killed in action or died in the line of duty; and

(B) who files an application under Section 59-2-1105 for a veteran's exemption; or

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(iii) a minor orphan:

(A) of a:

(I) deceased ~~[disabled]~~ veteran with a disability; or

(II) veteran who was killed in action or died in the line of duty; and

(B) who files an application under Section 59-2-1105 for a veteran's exemption[;].

(c) "Consumer price index" is as described in Section 1(f)(4), Internal Revenue Code, and defined in Section 1(f)(5), Internal Revenue Code[;].

(d) "Deceased ~~[disabled]~~ veteran with a disability" means a deceased person who was a ~~[disabled]~~ veteran with a disability at the time the person died[;].

~~[(f)]~~ (e) "Military entity" means:

(i) the federal Department of Veterans Affairs; or

(ii) a component of the armed forces of:

(A) the United States; or

(B) the state[;].

~~[(g)]~~ (f) "Residence" is as defined in Section 59-2-1202, except that a rented dwelling is not considered to be a residence[;].

~~[(h)]~~ (g) "Veteran who was killed in action or died in the line of duty" means a person who was killed in action or died in the line of duty in the military service of the United States or the state, regardless of whether that person ~~[was disabled]~~ had a disability at the time that person was killed in action or died in the line of duty~~[-and]~~.

~~[(e)]~~ ~~"disabled veteran"~~ (h) "Veteran with a disability" means a ~~[disabled]~~ person with a disability who, during military training or a military conflict, ~~[was disabled]~~ acquired a disability in the line of duty in the military service of the United States or the state[;].

(i) "Veteran's exemption" means a property tax exemption provided for in Subsection (2).

(2) (a) The amount of taxable value of the property described in Subsection (2)(b) is exempt from taxation as calculated under Subsections (2)(c) through (e) if the property described in Subsection (2)(b) is owned by:

(i) a ~~[disabled]~~ veteran with a disability; or

(ii) the unmarried surviving spouse or a minor orphan of a:

(A) deceased ~~[disabled]~~ veteran with a disability; or

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(B) veteran who was killed in action or died in the line of duty.

(b) Subsection (2)(a) applies to the following property:

(i) the claimant's primary residence;

(ii) tangible personal property that:

(A) is held exclusively for personal use; and

(B) is not used in a trade or business; or

(iii) a combination of Subsections (2)(b)(i) and (ii).

(c) Except as provided in Subsection (2)(d) or (e), the amount of taxable value of property described in Subsection (2)(b) that is exempt under Subsection (2)(a) is:

(i) as described in Subsection (2)(f), if the property is owned by:

(A) a ~~[disabled]~~ veteran with a disability;

(B) the unmarried surviving spouse of a deceased ~~[disabled]~~ veteran with a disability;

or

(C) a minor orphan of a deceased ~~[disabled]~~ veteran with a disability; or

(ii) equal to the total taxable value of the claimant's property described in Subsection (2)(b) if the property is owned by:

(A) the unmarried surviving spouse of a veteran who was killed in action or died in the line of duty; or

(B) a minor orphan of a veteran who was killed in action or died in the line of duty.

(d) (i) Notwithstanding Subsection (2)(c)(i) and subject to Subsection (2)(d)(ii), a veteran's exemption may not be allowed under this Subsection (2) if the percentage of disability listed on the certificate described in Subsection 59-2-1105(3)(a) is less than 10%.

(ii) A ~~[disabled]~~ veteran with a disability is considered to ~~[be]~~ have a 100% ~~[disabled]~~ disability, regardless of the percentage of disability listed on a certificate described in Subsection 59-2-1105(3)(a), if the United States Department of Veterans' Affairs certifies the veteran in the classification of individual unemployability.

(e) Notwithstanding Subsection (2)(c)(i), a claimant who is the unmarried surviving spouse or minor orphan of a deceased ~~[disabled]~~ veteran with a disability may claim a veteran's exemption for the total value of the property described in Subsection (2)(b) if:

(i) the deceased ~~[disabled]~~ veteran with a disability served in the military service of the United States or the state prior to January 1, 1921; and

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(ii) the percentage of disability listed on the certificate described in Subsection 59-2-1105(3)(a) for the deceased ~~[disabled]~~ veteran with a disability is 10% or more.

(f) Except as provided in Subsection (2)(g), the amount of the taxable value of the property described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) is equal to the percentage of disability listed on the certificate described in Subsection 59-2-1105(3)(a) multiplied by the adjusted taxable value limit.

(g) Notwithstanding Subsection (2)(f), the amount of the taxable value of the property described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) may not be greater than the taxable value of the property described in Subsection (2)(b).

(h) For purposes of this section and Section 59-2-1105, a person who is honorably discharged from military service of the United States or the state:

(i) is presumed to be a citizen of the United States; and

(ii) shall not be required to provide additional proof of citizenship to establish that the veteran is a citizen of the United States.

(3) The Department of Veterans' Affairs created in Section 71-8-2 shall, through an informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act, resolve each dispute arising under this section concerning a veteran's status as a ~~[disabled]~~ veteran with a disability.

Section 104. Section **59-2-1105** is amended to read:

**59-2-1105. Application for veteran's exemption -- Rulemaking authority --
Statement -- County authority to make refunds.**

(1) (a) Except as provided in Subsection 59-2-1101(2)(c), a veteran's exemption may be allowed only if the interest of the claimant is on record on January 1 of the year the exemption is claimed.

(b) If the claimant has an interest in real property under a contract, the veteran's exemption may be allowed if it is proved to the satisfaction of the county that the claimant is:

(i) the purchaser under the contract; and

(ii) obligated to pay the taxes on the property beginning January 1 of the year the exemption is claimed.

(c) If the claimant is the grantor of a trust holding title to real or tangible personal property on which a veteran's exemption is claimed, the claimant may claim the portion of the

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veteran's exemption under Section 59-2-1104 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

(i) title to the portion of the trust will revest in the claimant upon the exercise of a power:

(A) by:

(I) the claimant as grantor of the trust;

(II) a nonadverse party; or

(III) both the claimant and a nonadverse party; and

(B) regardless of whether the power is a power:

(I) to revoke;

(II) to terminate;

(III) to alter;

(IV) to amend; or

(V) to appoint;

(ii) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the exemption; and

(iii) the claimant meets the requirements under this part for the exemption.

(2) (a) (i) A claimant applying for a veteran's exemption under this section shall file an application:

(A) with the county in which that person resides; and

(B) except as provided in Subsection (2)(b) or (e), on or before September 1 of the year in which that claimant is applying for the veteran's exemption in accordance with this section.

(ii) A county shall provide a claimant who files an application for a veteran's exemption in accordance with this section with a receipt:

(A) stating that the county received the claimant's application; and

(B) no later than 30 days after the day on which the claimant filed the application in accordance with this section.

(b) Notwithstanding Subsection (2)(a)(i)(B) or (2)(e):

(i) subject to Subsection (2)(b)(iv), for a claimant who applies for a veteran's exemption on or after January 1, 2004, a county shall extend the deadline for filing the application required by Subsection (2)(a) to September 1 of the year after the year the claimant

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would otherwise be required to file the application under Subsection (2)(a)(i)(B) if:

(A) on or after January 1, 2004, a military entity issues a written decision that the:

(I) ~~[disabled veteran is disabled]~~ veteran has a disability; or

(II) deceased ~~[disabled]~~ veteran with a disability with respect to whom the claimant applies for a veteran's exemption ~~[was disabled]~~ had a disability at the time the deceased ~~[disabled]~~ veteran with a disability died; and

(B) the date the written decision described in Subsection (2)(b)(i)(A) takes effect is in any year prior to the current calendar year;

(ii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a veteran's exemption on or after January 1, 2004, a county shall allow the claimant to amend the application required by Subsection (2)(a) on or before September 1 of the year after the year the claimant filed the application under Subsection (2)(a)(i)(B) if:

(A) on or after January 1, 2004, a military entity issues a written decision that the percentage of disability has changed for the:

(I) ~~[disabled]~~ veteran with a disability; or

(II) deceased ~~[disabled]~~ veteran with a disability with respect to whom the claimant applies for a veteran's exemption; and

(B) the date the written decision described in Subsection (2)(b)(ii)(A) takes effect is in any year prior to the current calendar year;

(iii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a veteran's exemption on or after January 1, 2004, a county shall extend the deadline for filing the application required by Subsection (2)(a) to September 1 of the year after the year the claimant would otherwise be required to file the application under Subsection (2)(a)(i)(B) if the county legislative body determines that:

(A) the claimant or a member of the claimant's immediate family had an illness or injury that prevented the claimant from filing the application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B);

(B) a member of the claimant's immediate family died during the calendar year the claimant was required to file the application under Subsection (2)(a)(i)(B);

(C) the claimant was not physically present in the state for a time period of at least six consecutive months during the calendar year the claimant was required to file the application

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under Subsection (2)(a)(i)(B); or

(D) the failure of the claimant to file the application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B):

(I) would be against equity or good conscience; and

(II) was beyond the reasonable control of the claimant; and

(iv) a county may extend the deadline for filing an application or amending an application under this Subsection (2) until December 31 if the county finds that good cause exists to extend the deadline.

(c) The following shall accompany the initial application for a veteran's exemption:

(i) a copy of the veteran's certificate of discharge from the military service of:

(A) the United States; or

(B) this state; or

(ii) other satisfactory evidence of eligible military service.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) establish procedures and requirements for amending an application under Subsection (2)(b)(ii);

(ii) for purposes of Subsection (2)(b)(iii), define the terms:

(A) "immediate family"; or

(B) "physically present"; or

(iii) for purposes of Subsection (2)(b)(iii), prescribe the circumstances under which the failure of a claimant to file an application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B):

(A) would be against equity or good conscience; and

(B) is beyond the reasonable control of a claimant.

(e) If a claimant has on file with the county the application described in Subsection (2)(a), the county may not require the claimant to file another application described in Subsection (2)(a) unless:

(i) the claimant applies all or a portion of an exemption allowed by this section to any tangible personal property;

(ii) the percentage of disability has changed for the:

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(A) [~~disabled~~] veteran with a disability; or

(B) deceased [~~disabled~~] veteran with a disability with respect to whom a claimant applies for a veteran's exemption under this section;

(iii) the [~~disabled~~] veteran with a disability dies;

(iv) the claimant's ownership interest in the claimant's primary residence changes;

(v) the claimant's occupancy of the primary residence for which the claimant claims an exemption under Section 59-2-1104 changes; or

(vi) the claimant who files an application for a veteran's exemption with respect to a deceased [~~disabled~~] veteran with a disability or veteran who was killed in action or died in the line of duty is a person other than the claimant who filed the application described in Subsection (2)(a) for a veteran's exemption:

(A) for the calendar year immediately preceding the current calendar year; and

(B) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who was killed in action or died in the line of duty.

(f) The county may verify that the residential property for which the claimant claims an exemption under Section 59-2-1104 is the claimant's primary residence.

(3) (a) (i) Subject to Subsection (3)(a)(ii), a claimant who files an application for a veteran's exemption shall have on file with the county a statement:

(A) issued by a military entity; and

(B) listing the percentage of disability for the [~~disabled~~] veteran with a disability or deceased [~~disabled~~] veteran with a disability with respect to whom a claimant applies for a veteran's exemption.

(ii) If a claimant has on file with the county the statement described in Subsection (3)(a)(i), the county may not require the claimant to file another statement described in Subsection (3)(a)(i) unless:

(A) the claimant who files an application under this section for a veteran's exemption with respect to a deceased [~~disabled~~] veteran with a disability or veteran who was killed in action or died in the line of duty is a person other than the claimant who filed the statement described in Subsection (3)(a)(i) for a veteran's exemption:

(I) for the calendar year immediately preceding the current calendar year; and

(II) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who

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was killed in action or died in the line of duty; or

(B) the percentage of disability has changed for a:

(I) [~~disabled~~] veteran with a disability; or

(II) deceased [~~disabled~~] veteran with a disability with respect to whom the claimant applies for a veteran's exemption under this section.

(b) For a claimant filing an application in accordance with Subsection (2)(b)(i), the claimant shall include with the application required by Subsection (2) a statement issued by a military entity listing the date the written decision described in Subsection (2)(b)(i)(A) takes effect.

(c) For a claimant amending an application in accordance with Subsection (2)(b)(ii), the claimant shall provide to the county a statement issued by a military entity listing the date the written decision described in Subsection (2)(b)(ii)(A) takes effect.

(4) (a) For purposes of this Subsection (4):

(i) "Property taxes due" means the taxes due on a claimant's property:

(A) for which a veteran's exemption is granted by a county; and

(B) for the calendar year for which the veteran's exemption is granted.

(ii) "Property taxes paid" is an amount equal to the sum of:

(A) the amount of the property taxes the claimant paid for the calendar year for which the claimant is applying for the veteran's exemption; and

(B) the veteran's exemption the county granted for the calendar year described in Subsection (4)(a)(ii)(A).

(b) A county granting a veteran's exemption to a claimant shall refund to that claimant an amount equal to the amount by which the claimant's property taxes paid exceed the claimant's property taxes due, if that amount is \$1 or more.

Section 105. Section **59-2-1109** is amended to read:

59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County authority to make refunds.

(1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

(a) the county finds that extreme hardship would prevail if the grants were not made; or

(b) the person [~~is disabled~~] has a disability.

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(2) (a) An application for the deferral or abatement shall be filed on or before September 1 with the county in which the property is located.

(b) The application shall include a signed statement setting forth the eligibility of the applicant for the deferral or abatement.

(c) Both husband and wife shall sign the application if the husband and wife seek a deferral or abatement on a residence:

- (i) in which they both reside; and
- (ii) which they own as joint tenants.

(d) A county may extend the deadline for filing under Subsection (2)(a) until December 31 if the county finds that good cause exists to extend the deadline.

(3) (a) For purposes of this Subsection (3):

(i) "Property taxes due" means the taxes due on a person's property:

- (A) for which an abatement is granted by a county under Section 59-2-1107; and
- (B) for the calendar year for which the abatement is granted.

(ii) "Property taxes paid" is an amount equal to the sum of:

(A) the amount of the property taxes the person paid for the taxable year for which the person is applying for the abatement; and

(B) the amount of the abatement the county grants under Section 59-2-1107.

(b) A county granting an abatement to a person under Section 59-2-1107 shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is \$1 or more.

(4) For purposes of this section:

(a) a poor person is any person:

(i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);

(ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and

(iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due; and

(b) "residence" includes a mobile home as defined under Section 70D-2-401.

(5) If the claimant is the grantor of a trust holding title to real or tangible personal

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property on which an abatement or deferral is claimed, the claimant may claim the portion of the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

(a) title to the portion of the trust will revert in the claimant upon the exercise of a power:

(i) by:

(A) the claimant as grantor of the trust;

(B) a nonadverse party; or

(C) both the claimant and a nonadverse party; and

(ii) regardless of whether the power is a power:

(A) to revoke;

(B) to terminate;

(C) to alter;

(D) to amend; or

(E) to appoint;

(b) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the abatement or deferral; and

(c) the claimant meets the requirements under this part for the abatement or deferral.

(6) The commission shall adopt rules to implement this section.

(7) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108;

(b) if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107; or

(c) both:

(i) the deferral described in Subsection (7)(a); and

(ii) the abatement described in Subsection (7)(b).

Section 106. Section **59-7-602** is amended to read:

59-7-602. Credit for cash contributions to sheltered workshops.

(1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state of Utah pursuant to Section 59-7-104, there shall be a tax credit allowed for cash

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contributions made within the taxable year to nonprofit rehabilitation sheltered workshop facilities for ~~[the disabled]~~ people with a disability operating in Utah which are certified by the Department of Human Services as a qualifying facility. The allowable credit is an amount equal to 50% of the aggregate amount of the cash contributions to qualifying rehabilitation facilities, but in no case shall the credit allowed exceed \$1,000.

(2) If a taxpayer has subtracted an amount for cash contributions to a sheltered workshop when determining federal taxable income, that amount shall be added back under Section 59-7-105 before a credit may be taken under this section.

Section 107. Section **59-10-1011** is amended to read:

59-10-1011. Tutoring tax credits for dependents with a disability.

(1) For purposes of this section:

(a) ~~["Disabled dependent"]~~ "Dependent with a disability" means a person who:

- (i) ~~[is disabled]~~ has a disability under Section 53A-15-301;
- (ii) attends a public or private kindergarten, elementary, or secondary school; and
- (iii) is eligible to receive disability program money under Section 53A-17a-111.

(b) (i) "Tutoring" means educational services:

(A) approved by an individual education plan team;

(B) provided to a ~~[disabled]~~ dependent with a disability; and

(C) that supplement classroom instruction the ~~[disabled]~~ dependent with a disability described in Subsection (1)(b)(i)(B) receives at a public or private kindergarten, elementary, or secondary school in the state.

(ii) "Tutoring" does not include:

(A) purchases of instructional books and material; or

(B) payments for attendance at extracurricular activities including sporting events, musical or dramatic events, speech activities, or driver education.

(2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after January 1, 1996, but beginning on or before December 31, 2009, a claimant allowed to claim a ~~[disabled]~~ dependent with a disability as a dependent under this section may claim for each ~~[disabled]~~ dependent with a disability a nonrefundable tutoring tax credit in an amount equal to 25% of the costs paid by the claimant for tutoring the ~~[disabled]~~ dependent with a disability.

(b) The tutoring tax credit under Subsection (2)(a) may not exceed \$100.

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(3) The tutoring tax credit under Subsection (2) may be claimed by a claimant only in the taxable year in which the claimant pays the tutoring costs for which the tax credit is claimed.

Section 108. Section **62A-1-108.5** is amended to read:

62A-1-108.5. Mental illness and intellectual disability examinations --

Responsibilities of the department.

(1) In accomplishing its duties to conduct mental illness and [~~mental retardation~~] intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

(2) When the department is ordered by the court to conduct a mental illness or [~~mental retardation~~] intellectual disability examination, the executive director shall:

(a) direct that the examination be performed at the Utah State Hospital; or

(b) designate at least one examiner, selected under Subsection (3), to examine the defendant in the defendant's current custody or status.

(3) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct mental illness and [~~mental retardation~~] intellectual disability examinations under Subsection (2)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6, Utah Procurement Code.

(4) Nothing in this section prohibits the executive director, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (3) to contract with the department to conduct the examination. In selecting that person, the criteria of the department established under Subsection (3) and the provisions of Title 63G, Chapter 6, Utah Procurement Code, shall be met.

Section 109. Section **62A-2-101** is amended to read:

62A-2-101. Definitions.

As used in this chapter:

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(1) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (26)(a); or

(B) provides the treatment or services described in Subsection (26)(a) on a limited basis, as described in Subsection (2)(b)(ii).

(b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (26)(a) on a limited basis if:

(A) the treatment or services described in Subsection (26)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (26)(a); or

(II) have a primary purpose of providing the services described in Subsection (26)(a).

(c) "Boarding school" does not include a therapeutic school.

(3) "Certified local inspector" means a person certified by the office, pursuant to Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).

(4) "Certified local inspector applicant" means a person for which designation as a certified local inspector is sought under Section 62A-2-108.3.

(5) "Child" means a person under 18 years of age.

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(6) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

- (a) finding a person to adopt the child;
- (b) placing the child in a home for adoption; or
- (c) foster home placement.

(7) "Client" means an individual who receives or has received services from a licensee.

(8) "Day treatment" means specialized treatment that is provided to:

- (a) a client less than 24 hours a day; and
- (b) four or more persons who:
 - (i) are unrelated to the owner or provider; and
 - (ii) have emotional, psychological, developmental, physical, or behavioral

dysfunctions, impairments, or chemical dependencies.

(9) "Department" means the Department of Human Services.

(10) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

(11) "Director" means the director of the Office of Licensing.

(12) "Domestic violence" is as defined in Section 77-36-1.

(13) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(14) "Elder adult" means a person 65 years of age or older.

(15) "Executive director" means the executive director of the department.

(16) "Foster home" means a temporary residential living environment for the care of:

- (a) fewer than four foster children in the home of a licensed or certified foster parent;

or

(b) four or more children in the home of a licensed or certified foster parent if the children are siblings.

(17) (a) "Human services program" means a:

- (i) foster home;
- (ii) therapeutic school;

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- (iii) youth program;
- (iv) resource family home; or
- (v) facility or program that provides:
 - (A) secure treatment;
 - (B) inpatient treatment;
 - (C) residential treatment;
 - (D) residential support;
 - (E) adult day care;
 - (F) day treatment;
 - (G) outpatient treatment;
 - (H) domestic violence treatment;
 - (I) child placing services;
 - (J) social detoxification; or
 - (K) any other human services that are required by contract with the department to be licensed with the department.
- (b) "Human services program" does not include a boarding school.
- (18) "Licensee" means a person or human services program licensed by the office.
- (19) "Local government" means a:
 - (a) city; or
 - (b) county.
- (20) "Minor" has the same meaning as "child."
- (21) "Office" means the Office of Licensing within the Department of Human Services.
- (22) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.
- (23) (a) "Person associated with the licensee" means a person:
 - (i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, or volunteer; or
 - (ii) applying to become affiliated with a licensee in any capacity listed under Subsection (23)(a)(i).
- (b) Notwithstanding Subsection (23)(a), "person associated with the licensee" does not

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include an individual serving on the following bodies unless that individual has direct access to children or vulnerable adults:

- (i) a local mental health authority under Section 17-43-301;
- (ii) a local substance abuse authority under Section 17-43-201; or
- (iii) a board of an organization operating under a contract to provide:
 - (A) mental health or substance abuse programs; or
 - (B) services for the local mental health authority or substance abuse authority.
- (c) "Person associated with the licensee" does not include a guest or visitor whose

access to children or vulnerable adults is directly supervised by the licensee at all times.

(24) "Regular business hours" means:

- (a) the hours during which services of any kind are provided to a client; or
- (b) the hours during which a client is present at the facility of a licensee.

(25) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who [~~are disabled~~] have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with:

- (i) dysfunctions or impairments that are:
 - (A) emotional;
 - (B) psychological;
 - (C) developmental; or
 - (D) behavioral; or
- (ii) chemical dependencies.
- (c) Treatment is not a necessary component of residential support.
- (d) "Residential support" does not include residential services that are performed:
 - (i) exclusively under contract with the Division of Services for People with

Disabilities; and

- (ii) in a facility that serves less than four individuals.

(26) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized

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treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

- (i) boarding school; or
- (ii) foster home.

(27) "Residential treatment program" means a human services program that provides:

- (a) residential treatment; or
- (b) secure treatment.

(28) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

(29) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

- (b) specialized rehabilitation to acquire sobriety; and
- (c) aftercare services.

(30) "Substance abuse treatment program" means a program:

(a) designed to provide:

- (i) specialized drug or alcohol treatment;
- (ii) rehabilitation; or
- (iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (30)(a) to persons with:

- (i) a diagnosed substance abuse disorder; or

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(ii) chemical dependency disorder.

(31) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.

(32) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

(33) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(34) (a) "Youth program" means a nonresidential program designed to provide

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behavioral, substance abuse, or mental health services to minors that:

- (i) serves adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services;
- (iii) may or may not provide host homes or other arrangements for overnight

accommodation of the youth;

- (iv) may or may not provide all or part of its services in the outdoors;
- (v) may or may not limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of the

minor's own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 110. Section **62A-2-120** is amended to read:

62A-2-120. Criminal background checks -- Direct access to children or vulnerable adults.

(1) (a) Except as provided in Subsection (7), an applicant for an initial license or a license renewal under this chapter shall submit to the office the names and other identifying information, which may include fingerprints, of all persons associated with the licensee, as defined in Section 62A-2-101, with direct access to children or vulnerable adults.

(b) The Criminal Investigations and Technical Services Division of the Department of Public Safety, or the office as authorized under Section 53-10-108, shall process the information described in Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(c) Except as provided in Subsection (1)(d), if an individual has not continuously lived in Utah for the five years immediately preceding the day on which the information referred to in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

(d) An individual is not required to comply with Subsection (1)(c) if:

(i) the individual continuously lived in Utah for the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, except for time spent outside of the United States and its territories; and

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(ii) the background check of the individual is being conducted for a purpose other than a purpose described in Subsection (1)(f).

(e) If an applicant described in Subsection (1)(a) spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, the office shall require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States and its territories.

(f) Notwithstanding Subsections (1)(a) through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division, if the background check of the applicant is being conducted for the purpose of:

- (i) licensing a prospective foster home; or
- (ii) approving a prospective adoptive placement of a child in state custody.

(g) Except as provided in Subsection (1)(h), in addition to the other requirements of this section, if the background check of an applicant described in Subsection (1)(a) is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

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- (i) federal law or rule permits otherwise; or
- (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
 - (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
 - (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f) and (g).
- (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to background checks.
- (2) The office shall approve a person for whom identifying information is submitted under Subsection (1) to have direct access to children or vulnerable adults in the licensee program if:
 - (a) (i) the person is found to have no criminal history record; or
 - (ii) (A) the only convictions in the person's criminal history record are misdemeanors or infractions not involving any of the offenses described in Subsection (3); and
 - (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years before the date of the search;
 - (b) the person is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;
 - (c) juvenile court records do not show that a court made a substantiated finding, under Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
 - (d) the person is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;
 - (e) the person has not pled guilty or no contest to a pending charge for any:
 - (i) felony;
 - (ii) misdemeanor listed in Subsection (3); or
 - (iii) infraction listed in Subsection (3); and
 - (f) for a person described in Subsection (1)(g), the registry check described in Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or

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neglect as defined in Section 62A-4a-1002.

(3) Except as provided in Subsection (8), unless at least 10 years have passed since the date of conviction, the office may not approve a person to have direct access to children or vulnerable adults in the licensee's human services program if that person has been convicted of an offense, whether a felony, misdemeanor, or infraction, that is:

- (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;
- (b) a violation of any pornography law, including sexual exploitation of a minor;
- (c) prostitution;
- (d) included in:
 - (i) Title 76, Chapter 5, Offenses Against the Person;
 - (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or
 - (iii) Title 76, Chapter 7, Offenses Against the Family;
- (e) a violation of Section 76-6-103, aggravated arson;
- (f) a violation of Section 76-6-203, aggravated burglary;
- (g) a violation of Section 76-6-302, aggravated robbery; or
- (h) a conviction for an offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

(4) (a) Except as provided in Subsection (8), if a person for whom identifying information is submitted under Subsection (1) is not approved by the office under Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the office shall conduct a comprehensive review of criminal and court records and related circumstances if the reason the approval is not granted is due solely to one or more of the following:

- (i) a conviction for:
 - (A) any felony not listed in Subsection (3);
 - (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the date of the search;
 - (C) a protective order or ex parte protective order violation under Section 76-5-108 or a similar statute in another state; or
 - (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years have passed since the date of conviction;

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(ii) a plea of guilty or no contest to a pending:

(A) felony;

(B) misdemeanor listed in Subsection (3); or

(C) infraction listed in Subsection (3);

(iii) the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(iv) juvenile court records show that a court made a substantiated finding, under Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

(v) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006; or

(vi) the person is listed in a child abuse or neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

(b) The comprehensive review under Subsection (4)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical or mental harm;

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

(vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric treatment received, or additional academic or vocational schooling completed, by the person; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review under Subsection (4)(a), the office shall approve the person who is the subject of the review to have direct access to children or

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vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, defining procedures for the comprehensive review described in this Subsection (4).

(5) (a) For purposes of this Subsection (5), "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising.

(b) A licensee may not permit any person to have direct access to a child or a vulnerable adult unless, subject to Subsection (5)(c), that person is:

(i) associated with the licensee and:

(A) approved by the office to have direct access to children or vulnerable adults under this section; or

(B) (I) the office has not determined whether to approve that person to have direct access to children or vulnerable adults;

(II) the information described in Subsection (1)(a), relating to that person, is submitted to the department; and

(III) that person is directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(ii) (A) not associated with the licensee; and

(B) directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(iii) the parent or guardian of the child or vulnerable adult; or

(iv) a person approved by the parent or guardian of the child or vulnerable adult to have direct access to the child or vulnerable adult.

(c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child or a vulnerable adult if that person is prohibited by court order from having that access.

(6) (a) Within 30 days after receiving the identifying information for a person under Subsection (1), the office shall give written notice to the person and to the licensee or applicant with whom the person is associated of:

(i) the office's decision regarding its background screening clearance and findings; and

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(ii) a list of any convictions found in the search.

(b) With the notice described in Subsection (6)(a), the office shall also give to the person the details of any comprehensive review conducted under Subsection (4).

(c) If the notice under Subsection (6)(a) states that the person is not approved to have direct access to children or vulnerable adults, the notice shall further advise the persons to whom the notice is given that either the person or the licensee or applicant with whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of its background screening decision described in this Subsection (6); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an initial license, or license renewal, to operate a substance abuse program that provides services to adults only.

(8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if the person has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a ~~disabled~~ child with a disability, as described in Section 76-5-110;

(D) endangerment of a child, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

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- (I) homicide by assault, as described in Section 76-5-209;
- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;
- (O) aggravated arson, as described in Section 76-6-103;
- (P) aggravated burglary, as described in Section 76-6-203;
- (Q) aggravated robbery, as described in Section 76-6-302; or
- (R) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would

constitute a violation of an offense described in Subsection (8)(a)(i).

(b) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the person would otherwise be approved or licensed, the person has been convicted of a felony involving conduct that constitutes any of the following:

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

- (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(9) If any provision of this section conflicts with a provision of Section 62A-2-120.5, the conflicting provision of Section 62A-2-120.5 shall govern.

Section 111. Section **62A-2-122** is amended to read:

62A-2-122. Access to vulnerable adult abuse and neglect information.

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(1) For purposes of this section:

(a) "Direct service worker" is as defined in Section 62A-5-101.

(b) "Personal care attendant" is as defined in Section 62A-3-101.

(2) With respect to a licensee, a certified local inspector applicant, a direct service worker, or a personal care attendant, the department may access the database created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation;

(b) (i) determining whether a certified local inspector applicant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a local government that a certified local inspector applicant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation;

(c) (i) determining whether a direct service worker has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

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(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; or

(d) (i) determining whether a personal care attendant has a supported or substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; and

(ii) informing a person described in Subsections 62A-3-101~~[(8)]~~ (9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation.

(3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (2).

(4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable ~~[Adults]~~ Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Section 112. Section **62A-4a-1010** is amended to read:

CHAPTER 3. AGING AND ADULT SERVICES

Part 3. Abuse, Neglect, or Exploitation of a Vulnerable Adult

62A-4a-1010. Notice and opportunity for court hearing for persons listed in Licensing Information System.

(1) Persons whose names were listed on the Licensing Information System as of May 6, 2002 and who have not been the subject of a court determination with respect to the alleged

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incident of abuse or neglect may at any time:

(a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or

(b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.

(2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:

(a) conviction;

(b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;

(c) plea of guilty;

(d) plea of guilty [~~and mentally ill~~] with a mental illness; or

(e) no contest.

(3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002, requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days:

(a) (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:

(A) a severe type of child abuse or neglect;

(B) chronic abuse; or

(C) chronic neglect; and

(ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from the Licensing Information System; or

(b) determine whether to file a petition for substantiation.

(4) If the division decides to file a petition, that petition must be filed no more than 14 days after the decision.

(5) The juvenile court shall act on the petition as provided in Subsection 78A-6-323(3).

(6) If a person whose name appears on the Licensing Information System prior to May 6, 2002 files a petition pursuant to Section 78A-6-323 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter on an expedited basis.

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Section 113. Section **62A-5-101** is amended to read:

62A-5-101. Definitions.

As used in this chapter:

- (1) "Approved provider" means a person approved by the division to provide home-based services.
- (2) (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
- (b) "Brain injury" does not include a deteriorating disease.
- (3) "Designated [~~mental retardation~~] intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i) (A) has at least one year of specialized training in working with persons with [~~mental retardation~~] an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with [~~mental retardation~~] an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of [~~mental retardation~~] an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with [~~mental retardation~~] an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of [~~mental retardation~~] an intellectual disability.
- (4) "Deteriorating disease" includes:
 - (a) multiple sclerosis;
 - (b) muscular dystrophy;
 - (c) Huntington's chorea;
 - (d) Alzheimer's disease;
 - (e) ataxia; or
 - (f) cancer.

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(5) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2, Utah State Developmental Center.

(6) "Direct service worker" means a person who provides services to a person with a disability:

(a) when the services are rendered in:

(i) the physical presence of the person with a disability; or

(ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and

(b) (i) under a contract with the division;

(ii) under a grant agreement with the division; or

(iii) as an employee of the division.

(7) "Director" means the director of the Division of Services for People with Disabilities.

(8) (a) "Disability" means a severe, chronic disability that:

(i) is attributable to:

(A) [~~mental retardation~~] an intellectual disability;

(B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;

(C) a physical disability; or

(D) a brain injury;

(ii) is likely to continue indefinitely;

(iii) (A) for a condition described in Subsection (8)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:

(I) self-care;

(II) receptive and expressive language;

(III) learning;

(IV) mobility;

(V) self-direction;

(VI) capacity for independent living; or

(VII) economic self-sufficiency; or

(B) for a condition described in Subsection (8)(a)(i)(D), results in a substantial

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limitation in three or more of the following areas:

- (I) memory or cognition;
- (II) activities of daily life;
- (III) judgment and self-protection;
- (IV) control of emotions;
- (V) communication;
- (VI) physical health; or
- (VII) employment; and
- (iv) requires a combination or sequence of special interdisciplinary or generic care,

treatment, or other services that:

- (A) may continue throughout life; and
- (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) hearing impairment;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.

(9) "Division" means the Division of Services for People with Disabilities.

(10) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.

(11) "Endorsed program" means a facility or program that:

- (a) is operated:
 - (i) by the division; or
 - (ii) under contract with the division; or
- (b) provides services to a person committed to the division under Part 3, Admission to

~~[Mental Retardation Facility]~~ an Intermediate Care Facility for People with an Intellectual

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Disability.

(12) "Licensed physician" means:

(a) an individual licensed to practice medicine under:

(i) Title 58, Chapter 67, Utah Medical Practice Act; or

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(b) a medical officer of the United States Government while in this state in the performance of official duties.

~~[(13) "Mental retardation" means a significant, subaverage general intellectual functioning, that:]~~

~~[(a) exists concurrently with deficits in adaptive behavior; and]~~

~~[(b) is manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.]~~

~~[(14) "Mental retardation facility" means a residential facility for a person with mental retardation, that receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving a mentally retarded person in this state.]~~

~~[(15)]~~ (13) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.

~~[(16)]~~ (14) "Public funds" means state or federal funds that are disbursed by the division.

~~[(17)]~~ (15) "Resident" means an individual under observation, care, or treatment in ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability.

Section 114. Section **62A-5-103** is amended to read:

62A-5-103. Responsibility and authority of division.

(1) For purposes of this section "administer" means to:

(a) plan;

(b) develop;

(c) manage;

(d) monitor; and

(e) conduct certification reviews.

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(2) The division has the authority and responsibility to:

(a) administer an array of services and supports for persons with disabilities and their families throughout the state;

(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);

(c) consistent with Section 62A-5-206, supervise the programs and facilities of the Developmental Center;

(d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:

(i) outreach;

(ii) information and referral;

(iii) prevention;

(iv) technical assistance; and

(v) public awareness;

(e) supervise the programs and facilities operated by, or under contract with, the division;

(f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;

(g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to minimize the risk of error when a person with a disability is admitted to [~~any structured residential mental retardation facility~~] an intermediate care facility for people with an intellectual disability, including:

(i) the developmental center; and

(ii) facilities within the community;

(h) determine whether to approve providers;

(i) monitor and sanction approved providers, as specified in the providers' contract;

(j) subject to Section 62A-5-103.5, receive and disburse public funds;

(k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;

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(l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;

(m) approve and monitor division programs to insure compliance with the board's rules and standards;

(n) establish standards and rules necessary to fulfill the division's responsibilities under Parts 2, Utah State Developmental Center, and 3 ~~[of this chapter]~~, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to ~~[mental retardation facilities]~~ an intermediate care facility for people with an intellectual disability;

(o) assess and collect equitable fees for a person who receives services provided under this chapter;

(p) maintain records of, and account for, the funds described in Subsection (2)(o);

(q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:

(i) applying to receive the services; or

(ii) currently receiving the services;

(r) in accordance with state law, establish rules:

(i) relating to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability that is an endorsed program; and

(ii) governing the admission, transfer, and discharge of a person with a disability;

(s) manage funds for a person residing in a facility operated by the division:

(i) upon request of a parent or guardian of the person; or

(ii) under administrative or court order; and

(t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons with Disabilities.

(3) The due process procedures described in Subsection (2)(g):

(a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and

(b) with regard to facilities in the community, do not require commitment to the division.

Section 115. Section **62A-5-104** is amended to read:

62A-5-104. Director -- Qualifications -- Responsibilities.

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(1) The director of the division shall be appointed by the executive director.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities, [~~mental retardation~~] intellectual disability, and other disabilities.

(3) The director is the administrative head of the division.

(4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

Section 116. Section **62A-5-110** is amended to read:

62A-5-110. Discretionary trusts for persons with disabilities -- Impact on state services.

(1) For purposes of this section:

(a) "Discretionary trust for a person with disabilities" means a trust:

(i) that is established for the benefit of an individual who, at the time the trust is created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;

(ii) under which the trustee has discretionary power to determine distributions;

(iii) under which the beneficiary may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;

(iv) that contains the assets of the beneficiary and is established for the benefit of the beneficiary by a parent, grandparent, legal guardian, or court;

(v) that is irrevocable, except that the trust document may provide that the trust be terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;

(vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and

(vii) providing that, upon the death of the beneficiary, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the beneficiary.

(b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

(2) A state agency providing services or support to a person with disabilities may:

(a) waive application of Subsection (1)(a)(v) with respect to that individual if it determines that application of the criteria would place an undue hardship upon that individual;

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and

(b) define, by rule, what constitutes "undue hardship" for purposes of this section.

(3) A discretionary trust for a person with disabilities is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:

(a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the ~~[disabled]~~ beneficiary with a disability; or

(b) as provided in Subsection (1)(a)(vi).

(4) Property, goods, and services that are purchased or owned by a discretionary trust for a person with disabilities and that are used or consumed by a ~~[disabled]~~ beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.

(5) The benefits that a person with disabilities is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that person.

(6) All state agencies shall disregard a discretionary trust for a person with disabilities, as defined in Subsection (1), as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.

(7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Section 117. Section **62A-5-201** is amended to read:

62A-5-201. Utah State Developmental Center.

(1) ~~[The facility for persons with mental retardation]~~ The intermediate care facility for people with an intellectual disability located in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."

(2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:

(a) provide care, services, and treatment to persons described in Subsection (3); and

(b) provide the following services and support to persons with disabilities who do not reside at the developmental center:

(i) psychiatric testing;

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- (ii) specialized medical and dental treatment and evaluation;
- (iii) family and client special intervention;
- (iv) crisis management;
- (v) occupational, physical, speech, and audiology services; and
- (vi) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.

(3) Except as provided in Subsection (6), within appropriations authorized by the Legislature, and notwithstanding the provisions of Part 3, Admission to [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual Disability, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:

- (a) persons with [~~mental retardation~~] an intellectual disability;
- (b) persons who receive services and supports under Subsection (2)(b); and
- (c) persons who require at least one of the following services from the developmental center:

- (i) continuous medical care;
- (ii) intervention for conduct that is dangerous to self or others; or
- (iii) temporary residential assessment and evaluation.

(4) (a) Except as provided in Subsection (6), the division shall, in the division's discretion:

- (i) place residents from the developmental center into appropriate less restrictive placements; and

- (ii) determine each year the number to be placed based upon the individual assessed needs of the residents.

- (b) The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.

(5) Except as provided in Subsection (7), within appropriations authorized by the Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing

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that the developmental center is the most appropriate placement for that person.

(6) (a) If the division determines, pursuant to Utah's ~~[Home and Community-Based Services Waiver for Individuals with Mental Retardation and Other Related Conditions]~~ Community Supports Waiver (CSW) for Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:

(i) if the person does not have a legal representative or legal guardian:

(A) inform the person of any feasible alternatives under the waiver; and

(B) give the person the choice of being placed in an ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or

(ii) if the person has a legal representative or legal guardian:

(A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and

(B) give the legal representative or legal guardian the choice of having the person placed in an ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.

(b) If a person chooses, under Subsection (6)(a)(i), to be placed in an ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the person whether the person prefers to be placed in the developmental center rather than a private ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability; and

(ii) if the person expresses a preference to be placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private ~~[ICF/MR]~~ intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the person's preference to be placed in the developmental center if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private ~~[ICF/MR]~~ intermediate care facility for people with an intellectual

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disability; and

(II) place the person in the developmental center or a private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability.

(c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to have the person placed in an [~~ICF/MR~~] intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the legal representative or legal guardian whether the legal representative or legal guardian prefers to have the person placed in the developmental center rather than a private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; and

(ii) if the legal representative or legal guardian expresses a preference to have the person placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the legal representative's or legal guardian's preference for the person's placement if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability.

(7) The certification described in Subsection (5) is not required for a person who receives services and support under Subsection (2)(b).

Section 118. Section **62A-5-206** is amended to read:

62A-5-206. Powers and duties of division.

The powers and duties of the division, with respect to the developmental center are as follows:

(1) to establish rules, not inconsistent with law, for the government of the developmental center;

(2) to receive, take, and hold property, both real and personal, in trust for the state for the use and benefit of the developmental center;

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(3) to establish rules governing the admission and discharge of persons with [~~mental retardation~~] an intellectual disability in accordance with state law;

(4) to employ necessary medical and other professional personnel to assist in establishing rules relating to the developmental center and to the treatment and training of persons with [~~mental retardation~~] an intellectual disability at the center;

(5) to transfer a person who has been committed to the developmental center under Part 3 of this chapter to any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facilities or programs available meet the needs indicated, and if transfer would be in the best interest of that person. A person transferred shall remain under the jurisdiction of the division;

(6) the developmental center may receive a person who meets the requirements of Subsection 62A-5-201(3) from any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facility or programs of the developmental center meet those needs, and if transfer would be in the best interest of that person. A person so received by the developmental center remains under the jurisdiction of the division;

(7) to manage funds for a person residing in the developmental center, upon request by that person's parent or guardian, or upon administrative or court order;

(8) to charge and collect a fair and equitable fee from developmental center residents, parents who have the ability to pay, or guardians where funds for that purpose are available; and

(9) supervision and administration of security responsibilities for the developmental center is vested in the division. The executive director may designate, as special function officers, individuals to perform special security functions for the developmental center that require peace officer authority. Those special function officers may not become or be designated as members of the Public Safety Retirement System.

Section 119. Section **62A-5-207** is amended to read:

62A-5-207. Superintendent -- Qualifications.

The superintendent of the developmental center, appointed in accordance with Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities

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and ~~[mental retardation]~~ intellectual disability.

Section 120. Section **62A-5-302** is amended to read:

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62A-5-302. Division responsibility.

The division is responsible:

(1) for the supervision, care, and treatment of persons with ~~[mental retardation]~~ an intellectual disability in this state who are committed to the division's jurisdiction under the provisions of this part; and

(2) to evaluate and determine the most appropriate, least restrictive setting for ~~[a mentally retarded]~~ an individual with an intellectual disability.

Section 121. Section **62A-5-304** is amended to read:

62A-5-304. Limited admission of persons convicted of felony offenses.

A person with ~~[mental retardation]~~ an intellectual disability who has been convicted of a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may not be admitted to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability unless it is determined by the division, in accordance with the provisions of this part and other state law, that the person may benefit from treatment in that facility.

Section 122. Section **62A-5-305** is amended to read:

62A-5-305. Residency requirements -- Transportation of person to another state.

(1) A person with ~~[mental retardation]~~ an intellectual disability who has a parent or guardian residing in this state may be admitted to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability in accordance with the provisions of this part.

(2) If a person with ~~[mental retardation]~~ an intellectual disability enters Utah from another state, the division may have that person transported to the home of a relative or friend located outside of this state, or to an appropriate facility in the state where the person with ~~[mental retardation]~~ the intellectual disability is domiciled. This section does not prevent a person with ~~[mental retardation]~~ an intellectual disability who is temporarily located in this state from being temporarily admitted or committed to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability in this state.

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Section 123. Section **62A-5-308** is amended to read:

62A-5-308. Commitment -- Persons under age 18.

Beginning July 1, 1993, the director of the division or ~~[his]~~ the director's designee, may commit an individual under 18 years of age who has ~~[mental retardation]~~ an intellectual disability or symptoms of ~~[mental retardation]~~ an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

(1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or

(2) an emergency commitment in accordance with the provisions of Section 62A-5-311.

Section 124. Section **62A-5-309** is amended to read:

62A-5-309. Commitment -- Person 18 years or older.

Beginning July 1, 1993, the director or his designee may commit to the division an individual 18 years of age or older who has ~~[mental retardation]~~ an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

- (1) involuntary commitment under the provisions of Section 62A-5-312; or
- (2) temporary emergency commitment under the provisions of Section 62A-5-311.

Section 125. Section **62A-5-310** is amended to read:

62A-5-310. Involuntary commitment.

An individual may not be involuntarily committed to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability except in accordance with Sections 62A-5-311 and 62A-5-312.

Section 126. Section **62A-5-311** is amended to read:

62A-5-311. Temporary emergency commitment -- Observation and evaluation.

(1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability for observation and evaluation upon:

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(a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:

(i) a belief that the individual has [~~mental retardation~~] an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;

(ii) personal knowledge of the individual's condition; and

(iii) the circumstances supporting that belief; or

(b) certification by a licensed physician or designated [~~mental retardation~~] intellectual disability professional stating that the physician or designated [~~mental retardation~~] intellectual disability professional:

(i) has examined the individual within a three-day period immediately preceding the certification; and

(ii) is of the opinion that the individual has [~~mental retardation~~] an intellectual disability, and that because of the individual's [~~mental retardation~~] intellectual disability is likely to injure self or others if not immediately committed.

(2) If the individual in need of commitment is not placed in the custody of the director or [~~his~~] the director's designee by the person submitting the application, the [~~director~~] director's or [~~his~~] the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.

(3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by [~~Subsection~~] Subsections (1)(b) and [~~Subsection~~] (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated [~~mental retardation facility~~] intermediate care facility for people with an intellectual disability.

(4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.

(b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.

(5) If an individual is committed to the division under this section on the application of

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any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Section 127. Section **62A-5-312** is amended to read:

62A-5-312. Involuntary commitment -- Procedures -- Necessary findings

-- Periodic review.

(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has ~~[mental retardation]~~ an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:

(a) a certificate of a licensed physician or a designated ~~[mental retardation]~~ intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated ~~[mental retardation]~~ intellectual disability professional examined the individual and believes that the individual ~~[is mentally retarded]~~ has an intellectual disability and is in need of involuntary commitment; or

(b) a written statement by the petitioner ~~[stating]~~ that:

(i) states that the individual was requested to, but refused to, submit to an examination for ~~[mental retardation]~~ an intellectual disability by a licensed physician or designated ~~[mental retardation]~~ intellectual disability professional, and that the individual refuses to voluntarily go to the division or ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability recommended by the division for treatment~~[- That statement shall be];~~

(ii) is under oath; and ~~[set]~~

(iii) sets forth the facts on which ~~[it]~~ the statement is based.

(2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability and may direct a designated ~~[mental retardation]~~ intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.

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(3) The court may issue a detention order and may direct a peace officer to immediately take the individual to [~~a mental retardation facility~~] an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated [~~mental retardation~~] intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:

- (a) poses an immediate danger of physical injury to self or others;
- (b) requires involuntary commitment pending examination and hearing;
- (c) the individual was requested but refused to submit to an examination by a licensed physician or designated [~~mental retardation~~] intellectual disability professional; or
- (d) the individual refused to voluntarily go to the division or to [~~a mental retardation facility~~] an intermediate care facility for people with an intellectual disability recommended by the division.

(4) (a) If the court issues a detention order based on an application that did not include a certification by a designated [~~mental retardation~~] intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:

- (i) whether the director or his designee believes that the individual [~~is mentally retarded~~] has an intellectual disability; and
- (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.

(b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

(5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.

(6) (a) Immediately after commencement of proceedings for involuntary commitment,

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the court shall give notice of commencement of the proceedings to:

- (i) the individual to be committed;
- (ii) the applicant;
- (iii) any legal guardian of the individual;
- (iv) adult members of the individual's immediate family;
- (v) legal counsel of the individual to be committed, if any;
- (vi) the division; and
- (vii) any other person to whom the individual requests, or the court designates, notice

to be given.

(b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.

(7) That notice shall:

- (a) set forth the allegations of the petition and all supporting facts;
- (b) be accompanied by a copy of any detention order issued under Subsection (3); and
- (c) state that a hearing will be held within the time provided by law, and give the time

and place for that hearing.

(8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:

(a) there are no appropriate facilities for persons with ~~[mental retardation]~~ an intellectual disability within the judicial district; and

(b) the transfer will not be adverse to the interests of the individual.

(9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated ~~[mental retardation]~~ intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated ~~[mental retardation]~~ intellectual disability professionals. The examinations shall be conducted:

(i) separately;

(ii) at the home of the individual to be committed, a hospital, ~~[a facility for person's with mental retardation]~~ an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and

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(iii) within a reasonable period of time after appointment of the examiners by the court.

(b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:

(i) the individual [~~is not mentally retarded~~] does not have an intellectual disability; or

(ii) treatment programs are available and will be used by the individual without court proceedings.

(10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

(b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable [~~attorneys'~~] attorney fees as determined by the court.

(11) The division or a designated [~~mental retardation~~] intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

(12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The court may, in its discretion:

(i) receive the testimony of any other person;

(ii) allow a waiver of the right to appear only for good cause shown;

(iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

(iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.

(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the

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individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

(13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

(a) the individual to be committed [~~is mentally retarded~~] has an intellectual disability;

(b) because of the individual's [~~mental retardation~~] intellectual disability one or more of the following conditions exist:

(i) the individual poses an immediate danger of physical injury to self or others;

(ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the [~~mental retardation facility~~] intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

(14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.

(15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the [~~facility for persons with mental retardation~~] intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.

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(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated [~~mental retardation~~] intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

(17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.

(c) The staff of the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of any discharge.

(d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the [~~mental retardation facility~~] intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.

(e) If the director of the division, or [~~his~~] the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Section 128. Section **62A-5-313** is amended to read:

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62A-5-313. Transfer -- Procedures.

(1) The director of the division, or the director's designee, may place an involuntarily committed resident in appropriate care or treatment outside the ~~[mental retardation facility]~~ intermediate care facility for people with an intellectual disability. During that placement, the order of commitment shall remain in effect, until the resident is discharged or the order is terminated.

(2) If the resident, or the resident's parent or guardian, objects to a proposed placement under this section, the resident may appeal the decision to the executive director or the executive director's designee. Those appeals shall be conducted in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an objection is made, the proposed placement may not take effect until the committee holds that hearing and the executive director makes a final decision on the placement.

Section 129. Section **62A-5-316** is amended to read:

62A-5-316. Temporary detention.

Pending removal to ~~[a mental retardation facility]~~ an intermediate care facility for people with an intellectual disability, an individual taken into custody or ordered to be committed under this part may be detained in ~~[his or her]~~ the individual's home, or in some other suitable facility. The individual shall not, however, be detained in a nonmedical facility used for detention of individuals charged with or convicted of penal offenses, except in a situation of extreme emergency. The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

Section 130. Section **62A-5-317** is amended to read:

62A-5-317. Authority to transfer resident.

(1) The administrator of ~~[a mental retardation facility, or his]~~ an intermediate care facility for people with an intellectual disability, or the administrator's designee, may transfer or authorize the transfer of a resident to another ~~[mental retardation facility]~~ intermediate care facility for people with an intellectual disability if, before the transfer, the administrator conducts a careful evaluation of the resident and ~~[his]~~ the resident's treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred, the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's

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nearest known relative.

(2) If a resident, or ~~[his]~~ the resident's parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

Section 131. Section **62A-5-318** is amended to read:

62A-5-318. Involuntary treatment with medication -- Committee -- Findings.

(1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the ~~[facility for persons with mental retardation]~~ intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:

(a) a licensed physician experienced in treating persons with ~~[mental retardation and related disabilities]~~ an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;

(b) a psychologist who is a designated ~~[mental retardation]~~ intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and

(c) another designated ~~[mental retardation]~~ intellectual disability professional of the facility for persons with ~~[mental retardation]~~ an intellectual disability, or a designee.

(2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:

(a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and

(b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.

(3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication

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and its possible side effects, and any previous reaction to the same or comparable medication.

(4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Section 132. Section **62A-6-101** is amended to read:

CHAPTER 6. STERILIZATION OF A PERSON WITH A DISABILITY

62A-6-101. Definitions.

As used in this chapter:

(1) "Informed consent" means consent that is voluntary and based on an understanding by the person to be sterilized of the nature and consequences of sterilization, the reasonably foreseeable risks and benefits of sterilization, and the available alternative methods of contraception.

(2) "Institutionalized" means residing in the Utah State Developmental Center, the Utah State Hospital, a residential facility for persons with a disability as defined in Sections 10-9a-103 and 17-27a-103, a group home for ~~[disabled]~~ persons with a disability, a nursing home, or a foster care home or facility.

(3) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.

Section 133. Section **62A-11-111** is amended to read:

62A-11-111. Lien provisions.

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:

(1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.

(2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of

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sale and settlement of an estate as follows:

(a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.

(b) ~~[When]~~ Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:

- (i) cost of funeral expenses not exceeding \$1,500;
- (ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;
- (iii) realty fees, if any;
- (iv) costs of revenue stamps, if any;
- (v) costs of abstract or title insurance, whichever is the least costly;
- (vi) ~~[attorney's]~~ attorney fees not exceeding the recommended fee established by the Utah State Bar~~[- When an attorney sells the property in an estate he is probating, he is entitled only to either a real estate fee or an attorney's fee, whichever is the lesser amount];~~
- (vii) administrator's fee not to exceed \$150;
- (viii) court costs; and
- (ix) delinquent taxes, if any.

(c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:

- (i) a real estate fee; or
- (ii) an attorney fee.

(3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed \$1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the \$1,000 exemption.

(4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.

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(5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).

(6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for ~~[physically and mentally ill]~~ persons with a physical or mental disability.

(7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.

(8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.

(9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.

(10) Liens shall become due and payable, and the department shall seek collection of each lien now held:

(a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by

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[him] the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;

(b) upon the death of the recipient and [his] the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;

(c) when a recipient voluntarily offers to settle the lien; or

(d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.

(11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, [his] the recipient's heirs, or administrators of the estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or personal property of the recipient[;] or [his] the recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate proceedings, whichever occurs later.

(12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).

(13) All sums so recovered, except those credited to the federal government, shall be retained by the department.

(14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any

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document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.

(15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Section 134. Section **62A-15-605** is amended to read:

62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and purpose.

(1) There is established the Forensic Mental Health Coordinating Council composed of the following members:

- (a) the director or the director's appointee;
- (b) the superintendent of the state hospital or the superintendent's appointee;
- (c) the executive director of the Department of Corrections or the executive director's appointee;
- (d) a member of the Board of Pardons and Parole or its appointee;
- (e) the attorney general or the attorney general's appointee;
- (f) the director of the Division of Services for People with Disabilities or the director's appointee;
- (g) the director of the Division of Juvenile Justice Services or the director's appointee;
- (h) the director of the Commission on Criminal and Juvenile Justice or the director's appointee;
- (i) the state court administrator or the administrator's appointee;
- (j) the state juvenile court administrator or the administrator's appointee;
- (k) a representative from a local mental health authority or an organization, excluding the state hospital that provides mental health services under contract with the Division of Substance Abuse and Mental Health or a local mental health authority, as appointed by the director of the division;
- (l) the executive director of the Governor's Council for People with Disabilities or the director's appointee; and
- (m) other persons as appointed by the members described in Subsections (1)(a) through (l).

(2) A member may not receive compensation or benefits for the member's service, but

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may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(3) The purpose of the Forensic Mental Health Coordinating Council is to:

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

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

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

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

(e) study, evaluate, and recommend changes to laws and procedures relating to persons with [~~mental retardation~~] an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

(f) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with persons with [~~mental retardation~~] an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system; and

(g) promote judicial education relating to persons with [~~mental retardation~~] an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system.

Section 135. Section **62A-15-608** is amended to read:

62A-15-608. Local mental health authority -- Supervision and treatment of persons with a mental illness.

(1) Each local mental health authority has responsibility for supervision and treatment of [~~mentally ill~~] persons with a mental illness who have been committed to its custody under

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the provisions of this part, whether residing in the state hospital or elsewhere.

(2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 62A-15-603, shall enforce Sections 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

Section 136. Section **62A-15-610** is amended to read:

62A-15-610. Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.

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

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

(a) persons 18 years of age and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;

(b) persons under 18 years of age who meet the criteria necessary for commitment under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, and for whom no less restrictive alternative is available;

(c) persons adjudicated and found to be guilty [~~and mentally ill~~] with a mental illness under Title 77, Chapter 16a, Commitment and Treatment of [~~Mentally Ill~~] Persons with a Mental Illness;

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

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

(f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and

(g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

Section 137. Section **62A-15-616** is amended to read:

62A-15-616. Persons entering state mentally ill.

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(1) A person who enters this state while mentally ill may be returned by a local mental health authority to the home of relatives or friends of that ~~[mentally ill]~~ person with a mental illness, if known, or to a hospital in the state where that ~~[mentally ill]~~ person with a mental illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on Mental Health.

(2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Section 138. Section **62A-15-619** is amended to read:

62A-15-619. Liability of estate of person with a mental illness.

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

Section 139. Section **62A-15-629** is amended to read:

62A-15-629. Temporary commitment -- Requirements and procedures.

(1) (a) An adult may be temporarily, involuntarily committed to a local mental health authority upon:

(i) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to ~~[himself]~~ self or others if not immediately restrained, and stating the personal knowledge of the individual's condition or circumstances which lead to that belief; and

(ii) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period immediately preceding that certification, and that ~~[he]~~ the physician or designated examiner is of the opinion that the individual ~~[is mentally ill]~~ has a mental illness and, because of ~~[his]~~ the individual's mental illness, is likely to injure ~~[himself]~~ self or others if not immediately restrained.

(b) Application and certification as described in Subsection (1)(a) authorizes any peace officer to take the individual into the custody of a local mental health authority and transport the individual to that authority's designated facility.

(2) If a duly authorized peace officer observes a person involved in conduct that gives

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the officer probable cause to believe that the person [~~is mentally ill~~] has a mental illness, as defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into protective custody. The peace officer shall transport the person to be transported to the designated facility of the appropriate local mental health authority pursuant to this section, either on the basis of [~~his~~] the peace officer's own observation or on the basis of a mental health officer's observation that has been reported to [~~him~~] the peace officer by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of the local mental health authority and make application for commitment of that person to the local mental health authority. The application shall be on a prescribed form and shall include the following:

(a) a statement by the officer that [~~he~~] the officer believes, on the basis of personal observation or on the basis of a mental health officer's observation reported to [~~him~~] the officer by the mental health officer, that the person is, as a result of a mental illness, a substantial and immediate danger to [~~himself~~] self or others;

(b) the specific nature of the danger;

(c) a summary of the observations upon which the statement of danger is based; and

(d) a statement of facts which called the person to the attention of the officer.

(3) A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-15-631. If that application has been made, an order of detention may be entered under Subsection 62A-15-631(3). If no order of detention is issued, the patient shall be released unless he has made voluntary application for admission.

(4) Transportation of [~~mentally ill~~] persons with a mental illness pursuant to Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law enforcement authority or, under the appropriate law enforcement's authority, by ambulance to the extent that Subsection (5) applies. However, if the designated facility is outside of that authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the person to be transported by ambulance to the extent that Subsection (5) applies.

(5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be

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transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In addition, if the person requires physical medical attention, the peace officer shall direct that transportation be to an appropriate medical facility for treatment.

Section 140. Section **62A-15-631** is amended to read:

62A-15-631. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.

(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual ~~[is mentally ill]~~ has a mental illness and should be involuntarily committed. That application shall be accompanied by:

(a) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that ~~[he]~~ the physician or designated examiner is of the opinion that the individual is mentally ill and should be involuntarily committed; or

(b) a written statement by the applicant that:

(i) the individual has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner~~[- That application shall be];~~

(ii) is sworn to under oath; and ~~[shall state]~~

(iii) states the facts upon which the application is based.

(2) ~~[Prior to]~~ Before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, or may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness which poses a substantial danger, as defined in Section 62A-15-602, to ~~[himself]~~ self, others, or property requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment

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facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, ~~[he]~~ the examiner shall immediately send the report in writing to the clerk of the court.

(4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient ~~[prior to]~~ before, or upon, placement in the custody of a local mental health authority or, with respect to any individual presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.

(5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed

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patient.

(8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the basis for his or her involuntary commitment, and that findings resulting from the examination will be made available to the court.

(c) A time shall be set for a hearing to be held within 10 calendar days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that ~~[he]~~ the patient has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

(9) (a) ~~[Prior to]~~ Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow ~~[him]~~ counsel sufficient time to consult with the patient ~~[prior to]~~ before the hearing. In the case of an indigent patient, the payment of reasonable ~~[attorneys']~~ attorney fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found.

(b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good

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cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(e) The court shall consider all relevant historical and material information which is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

(f) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

- (A) the detention order;
- (B) admission notes;
- (C) the diagnosis;
- (D) any doctors' orders;
- (E) progress notes;
- (F) nursing notes; and
- (G) medication records pertaining to the current commitment.

(ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(10) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)(e), the court finds by clear and convincing evidence that:

- (a) the proposed patient has a mental illness;
- (b) because of the proposed patient's mental illness ~~[he]~~ the proposed patient poses a substantial danger, as defined in Section 62A-15-602, of physical injury to ~~[others or himself]~~ self or others, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;
- (c) the patient lacks the ability to engage in a rational decision-making process

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regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(d) there is no appropriate less-restrictive alternative to a court order of commitment; and

(e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to ~~his~~ the individual's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local

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mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and his counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

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

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 141. Section **62A-15-632** is amended to read:

62A-15-632. Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

(1) After a person has been involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(10), the conditions justifying commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection 62A-15-631(11) or conditional release under Section 62A-15-637, if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment [~~he~~] the patient will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in [~~his~~] the patient's ability to function in the least restrictive environment, thereby

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making ~~[him]~~ the patient a substantial danger to ~~[himself]~~ self or others.

(2) A patient whose treatment is continued or who is conditionally released under the terms of this section, shall be maintained in the least restrictive environment available ~~[which]~~ that can provide ~~[him]~~ the patient with the treatment that is adequate and appropriate.

Section 142. Section **62A-15-644** is amended to read:

62A-15-644. Additional powers of director -- Reports and records of division.

(1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates provided for under this part, and the information required to be contained therein, and to adopt rules that are not inconsistent with the provisions of this part that ~~[he]~~ the director finds to be reasonably necessary for the proper and efficient commitment of ~~[mentally ill]~~ persons with a mental illness.

(2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.

(3) A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this chapter.

Section 143. Section **62A-15-706** is amended to read:

62A-15-706. Parent advocate.

The division shall establish the position of a parent advocate to assist parents of ~~[mentally ill]~~ children with a mental illness who are subject to the procedures required by this part.

Section 144. Section **62A-15-902** is amended to read:

62A-15-902. Design and operation -- Security.

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

(2) (a) The forensic mental health facility accommodates the following populations:

(i) prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty ~~[and mentally ill]~~ with a mental illness or guilty ~~[and mentally ill]~~ with a mental illness at the time of the offense undergoing evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of

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~~[Mentally ill]~~ Persons with a Mental Illness;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty ~~[and mentally ill]~~ with a mental illness or guilty ~~[and mentally ill]~~ with a mental illness at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of

~~[Mentally ill]~~ Persons with a Mental Illness, who also have ~~[mental retardation]~~ an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate individuals to perform security functions for the state hospital.

Section 145. Section **63M-9-103** is amended to read:

63M-9-103. Definitions.

As used in this chapter:

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(1) "Children and youth at risk" means:

(a) [~~disabled~~] persons, age 18 to 22, who have a disability; or

(b) persons in the custody of the Division of Juvenile Justice Services within the Department of Human Services age 18 to 21; and

(c) minors who may at times require appropriate and uniquely designed intervention to:

(i) achieve literacy;

(ii) advance through the schools;

(iii) achieve commensurate with their ability; and

(iv) participate in society in a meaningful way as competent, productive, caring, and responsible citizens.

(2) "Council" means the Families, Agencies, and Communities Together State Council established under Section 63M-9-201.

(3) "Local interagency council" means a council established under Section 63M-9-301.

(4) "Steering committee" means the Families, Agencies, and Communities Together Steering Committee established under Section 63M-9-202.

(5) (a) "Child and family centered service delivery system" means services provided to children and youth at risk and their families that may be delivered by teams and within a supportive community environment.

(b) "Community" includes, when available, parents of children and youth at risk; directors of geographical service delivery areas designated by state agencies; local government elected officials; appointed county officials who are responsible for providing substance abuse, mental health, or public health services; educators; school districts; parent-teacher organizations; child and family advocacy groups; religious and community-based service organizations; individuals; and private sector entities who come together to develop, adopt, and administer a plan for a collaborative service delivery system for children and youth at risk.

(c) "Community resources" means time, money, services, and other contributions provided by individuals, private sector entities, religious organizations, community-based service organizations, school districts, municipal governments, and county governments.

(d) "Individualized and coordinated service plan" means a plan for services and supports that is comprehensive in its scope, is the product of a collaborative process between public and private service providers, and is specifically tailored to the unique needs of each

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child or youth served under this chapter.

(e) "Performance monitoring system" means a process to regularly collect and analyze performance information including performance indicators and performance goals:

(i) "performance indicators" means actual performance information regarding a program or activity; and

(ii) "performance goals" means a target level of performance or an expected level of performance against which actual performance is measured.

(f) "Plan for a collaborative service delivery system," "plan," or "plans" means a written document describing how a community proposes to deliver services and supports to children and youth at risk that effectively bring to bear all needed resources, including community resources, to enable them to achieve the outcomes described in Subsection (1)(c).

Section 146. Section **64-9b-1** is amended to read:

64-9b-1. Legislative findings.

(1) The Legislature finds that it is in the best interest of the state [~~of Utah~~] for the department to:

(a) develop job opportunities to further enhance the rehabilitation of inmates of the Utah state prison;

(b) establish and actively work toward the goal that all inmates shall be productively involved in a treatment, education, or work program, or a combination of these programs, as appropriate, except for inmates who the department determines [~~are physically or mentally disabled~~] have a physical or mental disability, or pose a danger to the public, so that they are unable to engage in these activities; and

(c) submit a comprehensive management plan outlining the department's plan to meet this goal to the Legislature on or before November 1 of each even-numbered year, and the plan shall include:

(i) a cost-effective analysis of current inmate education, treatment, and work programs; and

(ii) a study of the feasibility of expanding inmate work programs, particularly in regard to programs that:

(A) are not capital intensive;

(B) do not unfairly compete with existing Utah industry; and

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(C) are designed to increase the motivation, develop the work capabilities, and foster the cooperation of inmates.

(2) The Legislature further finds that a proper means to accomplish this is through a liberal application of this ~~[act]~~ chapter.

Section 147. Section **67-19-27** is amended to read:

67-19-27. Leave of absence with pay for employees with a disability who are covered under other civil service systems.

(1) As used in this section:

(a) (i) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes of this state.

(ii) "Law enforcement officer" specifically includes the following:

(A) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(B) all persons specified in Sections 23-20-1.5 and 79-4-501;

(C) investigators for the Motor Vehicle Enforcement Division;

(D) special agents or investigators employed by the attorney general;

(E) employees of the Department of Natural Resources designated as peace officers by law;

(F) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division; and

(G) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993.

(b) "State correctional officer" means a correctional officer as defined in Section 53-13-104 who is employed by the Department of Corrections.

(2) (a) Each law enforcement officer, state correctional officer, operator license examiner, commercial license examiner, or Driver License Division hearing examiner who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee ~~[is temporarily disabled]~~ has a temporary disability.

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(b) This compensation is in lieu of all other compensation provided by law except hospital and medical services that are provided by law.

(3) Each law enforcement officer or state correctional officer who ~~[is 100% disabled]~~ has a 100% disability through a criminal act upon ~~[his]~~ the law enforcement officer's person while in the lawful discharge of ~~[his]~~ the law enforcement officer's duties, shall be given a leave of absence with full compensation until ~~[he]~~ the law enforcement officer retires or reaches the retirement age of 62 years.

Section 148. Section **68-3-12.5** is amended to read:

68-3-12.5. Definitions for Utah Code.

(1) The definitions listed in this section apply to the Utah Code, unless:

(a) the definition is inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute; or

(b) a different definition is expressly provided for the respective title, chapter, part, section, or subsection.

(2) "Adjudicative proceeding" means:

(a) an action by a board, commission, department, officer, or other administrative unit of the state that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including an action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of an action described in Subsection (2)(a).

(3) "Administrator" includes "executor" when the subject matter justifies the use.

(4) "Advisory board," "advisory commission," and "advisory council" mean a board, commission, committee, or council that:

(a) is created by, and whose duties are provided by, statute or executive order;

(b) performs its duties only under the supervision of another person as provided by statute; and

(c) provides advice and makes recommendations to another person that makes policy for the benefit of the general public.

(5) "County executive" means:

(a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Changing Forms of County

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Government;

(b) the county executive, in the county executive-council optional form of government authorized by Section 17-52-504; or

(c) the county manager, in the council-manager optional form of government authorized by Section 17-52-505.

(6) "County legislative body" means:

(a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Changing Forms of County

Government;

(b) the county council, in the county executive-council optional form of government authorized by Section 17-52-504; and

(c) the county council, in the council-manager optional form of government authorized by Section 17-52-505.

(7) "Depose" means to make a written statement made under oath or affirmation.

(8) "Executor" includes "administrator" when the subject matter justifies the use.

(9) "Guardian" includes a person who:

(a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment; or

(b) is appointed by a court to manage the estate of a minor or incapacitated person.

(10) "Highway" includes:

(a) a public bridge;

(b) a county way;

(c) a county road;

(d) a common road; and

(e) a state road.

(11) "Intellectual disability" means a significant, subaverage general intellectual functioning that:

(a) exists concurrently with deficits in adaptive behavior; and

(b) is manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

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(12) "Intermediate care facility for people with an intellectual disability" means an intermediate care facility for the mentally retarded, as defined in Title XIX of the Social Security Act.

~~[(11)]~~ (13) "Land" includes:

- (a) land;
- (b) a tenement;
- (c) a hereditament;
- (d) a water right;
- (e) a possessory right; and
- (f) a claim.

~~[(12)]~~ (14) "Month" means a calendar month, unless otherwise expressed.

~~[(13)]~~ (15) "Oath" includes "affirmation."

~~[(14)]~~ (16) "Person" means:

- (a) an individual;
- (b) an association;
- (c) an institution;
- (d) a corporation;
- (e) a company;
- (f) a trust;
- (g) a limited liability company;
- (h) a partnership;
- (i) a political subdivision;
- (j) a government office, department, division, bureau, or other body of government;

and

(k) any other organization or entity.

~~[(15)]~~ (17) "Personal property" includes:

- (a) money;
- (b) goods;
- (c) chattels;
- (d) effects;
- (e) evidences of a right in action;

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(f) a written instrument by which a pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished; and

(g) a right or interest in an item described in Subsections ~~[(15)]~~ (17)(a) through (f).

~~[(16)]~~ (18) "Personal representative," "executor," and "administrator" include:

(a) an executor;

(b) an administrator;

(c) a successor personal representative;

(d) a special administrator; and

(e) a person who performs substantially the same function as a person described in Subsections ~~[(16)]~~ (18)(a) through (d) under the law governing the person's status.

~~[(17)]~~ (19) "Policy board," "policy commission," or "policy council" means a board, commission, or council that:

(a) is authorized to make policy for the benefit of the general public;

(b) is created by, and whose duties are provided by, the constitution or statute; and

(c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.

~~[(18)]~~ (20) "Population" is shown by the most recent state or national census, unless expressly provided otherwise.

~~[(19)]~~ (21) "Process" means a writ or summons issued in the course of a judicial proceeding.

~~[(20)]~~ (22) "Property" includes both real and personal property.

~~[(21)]~~ (23) "Real estate" or "real property" includes:

(a) land;

(b) a tenement;

(c) a hereditament;

(d) a water right;

(e) a possessory right; and

(f) a claim.

~~[(22)]~~ (24) "Review board," "review commission," and "review council" mean a board, commission, committee, or council that:

(a) is authorized to approve policy made for the benefit of the general public by another

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body or person;

(b) is created by, and whose duties are provided by, statute; and

(c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.

~~[(23)]~~ (25) "Road" includes:

(a) a public bridge;

(b) a county way;

(c) a county road;

(d) a common road; and

(e) a state road.

~~[(24)]~~ (26) "Signature" includes a name, mark, or sign written with the intent to authenticate an instrument or writing.

~~[(25)]~~ (27) "State," when applied to the different parts of the United States, includes a state, district, or territory of the United States.

~~[(26)]~~ (28) "Swear" includes "affirm."

~~[(27)]~~ (29) "Testify" means to make an oral statement under oath or affirmation.

~~[(28)]~~ (30) "United States" includes each state, district, and territory of the United States of America.

~~[(29)]~~ (31) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the text expressly references a portion of the 1953 recodification of the Utah Code as it existed:

(a) on the day on which the 1953 recodification of the Utah Code was enacted; or

(b) (i) after the day described in Subsection ~~[(29)]~~ (31)(a); and

(ii) before the most recent amendment to the referenced portion of the 1953 recodification of the Utah Code.

~~[(30)]~~ (32) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and every structure adapted to be navigated from place to place.

~~[(31)]~~ (33) "Will" includes a codicil.

~~[(32)]~~ (34) "Writ" means an order or precept in writing, issued in the name of:

(a) the state;

(b) a court; or

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(c) a judicial officer.

~~[(33)]~~ (35) "Writing" includes:

(a) printing;

(b) handwriting; and

(c) information stored in an electronic or other medium if the information is retrievable in a perceivable format.

Section 149. Section **71-10-1** is amended to read:

71-10-1. Definitions.

As used in this chapter:

(1) "Active duty" means active military duty and does not include active duty for training, initial active duty for training, or inactive duty for training.

~~[(3)]~~ (2) "Government entity" means the state, any county, municipality, local district, special service district, or any other political subdivision or administrative unit of the state, including state institutions of education.

~~[(4)]~~ (3) "Preference eligible" means:

(a) any individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated under honorable conditions;

(b) a ~~[disabled veteran with any]~~ veteran with a disability, regardless of the percentage of disability;

(c) the spouse or unmarried widow or widower of a veteran;

(d) a purple heart recipient; or

(e) a retired member of the armed forces who retired below the rank of major or its equivalent.

~~[(5)]~~ (4) "Veteran" means:

(a) an individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated or retired under honorable conditions; or

(b) any individual incurring an actual service-related injury or disability in the line of

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duty whether or not that person completed 180 consecutive days of active duty.

~~[(2) "Disabled veteran"]~~ (5) "Veteran with a disability" means an individual who has:

- (a) been separated or retired from the armed forces under honorable conditions; and
- (b) established the existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the federal Department of Veterans Affairs or a military department.

Section 150. Section **71-10-2** is amended to read:

71-10-2. Veteran's preference.

(1) Each government entity shall grant a veteran's preference upon initial hiring to each preference eligible veteran or preference eligible spouse according to the procedures and requirements of this chapter.

(2) The personnel officer of any government entity shall add to the score of a preference eligible who receives a passing score on an examination, or any rating or ranking mechanism used in selecting an individual for any career service position with the government entity:

- (a) ~~[five percent]~~ 5% of the total possible score, if ~~[he]~~ the preference eligible is a veteran;
- (b) ~~[10 percent]~~ 10% of the total possible score, if ~~[he]~~ the preference eligible is a ~~[disabled]~~ veteran with a disability or a purple heart recipient; or
- (c) in the case of a preference eligible spouse, widow, or widower, the same percentage the qualifying veteran is, or would have been, entitled to.

(3) A preference eligible who applies for a position that does not require an examination, or where examination results are other than a numeric score, shall be given preference in interviewing and hiring for the position.

Section 151. Section **71-11-2** is amended to read:

71-11-2. Definitions.

As used in this chapter:

- (1) "Administrator" means a Veterans' Nursing Home Administrator selected in accordance with Section 71-11-5.
- (2) "Board" means any Veterans' Nursing Home Advisory Board.
- (3) "Department" means the Department of Veterans' Affairs created in Section 71-8-2.

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(4) "Executive director" means the executive director of the Department of Veterans' Affairs.

(5) "Home" means any Utah Veterans' Nursing Home.

(6) "Veteran" [~~shall have the same meaning as found~~] is as defined in Subsection 71-10-1[(5)] (4).

Section 152. Section **72-10-601** is amended to read:

72-10-601. Definitions.

As used in this part:

(1) "City" means a municipality of the first class, as defined under Section 10-2-301, that:

(a) is authorized by statute to operate an airport; and

(b) operates an airport with greater than 10 million annual passengers.

(2) "Division" means the Criminal Investigation and Technical Services Division of the Department of Public Safety, established in Section 53-10-103.

(3) "Ground transportation service" means transporting passengers for hire or as a courtesy in connection with a business over public streets pursuant to a license with the city.

(4) (a) "Ground transportation service provider" means a driver who provides ground transportation service where the pickup or drop-off of a passenger occurs at an airport under a city's authority.

(b) "Ground transportation service provider" includes:

(i) a taxicab driver;

(ii) a limousine or luxury car driver;

(iii) a bus or minibus driver, except a driver of a transit vehicle, as defined in Section 17B-2a-802;

(iv) a courtesy vehicle or hotel vehicle driver;

(v) a special transportation vehicle driver who transports [~~disabled~~] persons with a disability; and

(vi) a van driver.

Section 153. Section **75-2-801** is amended to read:

75-2-801. Disclaimer of property interests -- Time -- Form -- Effect -- Waiver and bar -- Remedy not exclusive -- Application.

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(1) A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding:

(a) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(b) any restriction or limitation on the right to disclaim contained in the governing instrument. For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a ~~disabled~~ person with a disability, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.

(2) The following rules govern the time when a disclaimer shall be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer shall be filed in the district court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer shall be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to ~~himself~~ the maker or another the

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entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant or tenant by the entireties may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entireties devolving to ~~him~~ the surviving joint tenant or tenant by the entireties, if the joint tenancy or tenancy by the entireties was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit under it.

(d) If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the county recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer shall:

- (a) describe the property or interest disclaimed;
- (b) declare the disclaimer and extent thereof; and
- (c) be signed by the disclaimant.

(4) The effects of a disclaimer are:

(a) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed, or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.

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(b) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest per capita at each generation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes per capita at each generation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

(5) The right to disclaim property or an interest therein is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or a benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(7) An interest in property that exists on July 1, 1998, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after July 1, 1998.

Section 154. Section **75-5-303** is amended to read:

75-5-303. Procedure for court appointment of a guardian of an incapacitated person.

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(1) The incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity; and unless the allegedly incapacitated person has counsel of the person's own choice, it shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the court determines that the petition is without merit, in which case the attorney fees and court costs shall be paid by the person filing the petition.

(3) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, and submit a report in writing to the court.

(4) (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.

(b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated ~~[suffers from: (a)]~~ has:

(i) fourth stage Alzheimer's Disease; ~~[(b)]~~

(ii) extended comatosis; or ~~[(c) profound mental retardation.]~~

(iii) (A) an intellectual disability; and

(B) an intelligence quotient score under 20 to 25.

(c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.

Section 155. Section **75-5-316** is amended to read:

75-5-316. Expedited guardianship proceedings.

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(1) (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.

(b) For purposes of this section:

(i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.

(ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.

(2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.

(3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.

(4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.

(5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).

(6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct.

(7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.

(8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:

(a) the appropriate parties have been given notice;

(b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice

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or requested to present evidence under this section; and

(c) it is necessary and desirable to establish the guardianship.

(9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.

(10) A petition for a limited guardianship shall include the following information:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the ward;

(c) verification that the ward is a resident of the Utah State Developmental Center;

(d) the name and address of the nearest relative of the ward; and

(e) the reason for appointment of guardianship.

(11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:

(a) that the ward is a resident of the Utah State Developmental Center;

(b) the date the ward was originally admitted to the Utah State Developmental Center;

(c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of ~~[retardation]~~ the ward's intellectual disability, and any medical or physical conditions of the ward;

(d) that the Utah State Developmental Center is certified as an ~~[Intermediate Care Facility for the Mentally Retarded under Title XIX of the Social Security Act]~~ intermediate care facility for people with an intellectual disability;

(e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and

(f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.

(12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:

The court finds that:

(a) appointment of a limited guardianship for (named ward) is necessary and desirable

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as a means of providing continuing care and supervision and to ensure his welfare;

- (b) the ward is incapacitated;
- (c) (named guardian) is appointed as the limited guardian of (named ward); and
- (d) the guardianship is a limited guardianship solely for the purpose of:
 - (i) granting permission for medical and dental care on behalf of the ward; and
 - (ii) participation in the development and approval of the ward's individual program

plan.

(13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Section 156. Section **75-5-408** is amended to read:

75-5-408. Permissible court orders.

(1) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(a) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for ~~[his]~~ the person's benefit or the benefit of ~~[his]~~ the person's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, ~~[his]~~ the minor's family, and the members of ~~[his]~~ the minor's household.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of ~~[his]~~ the person's household, all the powers over ~~[his]~~ the person's estate and affairs ~~[which he]~~ that the person could exercise if present and not under disability, except the power to make a will. These powers include~~[-but are not limited to]~~ the power to make gifts, to convey or release ~~[his]~~ the person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release ~~[his]~~ the person's powers as

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trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate [~~which~~] that may extend beyond [~~his~~] the person's disability or life, to exercise options of the [~~disabled~~] person with a disability to purchase securities or other property, to exercise [~~his~~] the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise [~~his~~] the person's right to an elective share in the estate of [~~his~~] the person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(d) The court may exercise, or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that [~~he~~] the person either is incapable of consenting or has consented to the proposed exercise of power.

(2) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

Section 157. Section **75-5-425** is amended to read:

75-5-425. Distributive duties and powers of conservator.

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

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(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage ~~[his]~~ the protected person's affairs and the estate which has been conserved for ~~[him]~~ the protected person;

(ii) the accustomed standard of living of the protected person and members of ~~[his]~~ the protected person's household; and

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20% of the income from the estate.

(3) When a person who is a minor and who has not been adjudged ~~[disabled]~~ to have a disability under Subsection 75-5-401~~(1)(b)~~(2)(a) attains ~~[his]~~ the age of majority, ~~[his]~~ the person's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person ~~[which]~~ that may have come into ~~[his]~~ the conservator's possession, inform the executor or a beneficiary named in the will that ~~[he]~~ the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it. If after 40 days from the death of

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the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that ~~[he]~~ the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Parts 6 through 10, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Section 158. Section **75-5-501** is amended to read:

75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.

(1) Whenever a principal designates another ~~[his]~~ as the principal's attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding ~~[his]~~ the principal's disability, the authority of the attorney-in-fact or agent is exercisable by ~~[him]~~ the attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or ~~[disabled]~~ has acquired a disability and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

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(a) notify all interested persons of [~~his~~] the attorney-in-fact's or agent's status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with [~~his~~] the attorney-in-fact's or agent's name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney;

(c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

(4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or [~~his~~] the principal's heirs, devisees, and personal representative as if the principal were alive, competent, and [~~not disabled~~] did not have a disability, except as provided in Section 75-5-503.

(5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order as provided in Subsection 75-5-408(1)(d), has the same power the principal would have had, if [~~he were not disabled or~~] the principle did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

Section 159. Section **76-3-203.5** is amended to read:

76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the

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United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Title 76, Chapter 6, Part 1, Property Destruction;

(B) assault by prisoner, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by prisoner, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

(G) stalking, Subsection 76-5-106.5(2) or (3);

(H) threat of terrorism, Section 76-5-107.3;

(I) child abuse, Subsection 76-5-109(2)(a) or (b);

(J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

(K) abuse or neglect of ~~disabled~~ a child with a disability, Section 76-5-110;

(L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

(N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

(O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(P) rape, Section 76-5-402;

(Q) rape of a child, Section 76-5-402.1;

(R) object rape, Section 76-5-402.2;

(S) object rape of a child, Section 76-5-402.3;

(T) forcible sodomy, Section 76-5-403;

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- (U) sodomy on a child, Section 76-5-403.1;
- (V) forcible sexual abuse, Section 76-5-404;
- (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- (X) aggravated sexual assault, Section 76-5-405;
- (Y) sexual exploitation of a minor, Section 76-5a-3;
- (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,

Burglary and Criminal Trespass;

- (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- (CC) tampering with a witness under Subsection 76-8-508(1);
- (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);
- (GG) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
- (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;
- (II) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;
- (JJ) unlawful discharge of a firearm under Section 76-10-508;
- (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- (LL) bus hijacking under Section 76-10-1504; and
- (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
- (ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

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- (a) third degree felony is as if the conviction were for a first degree felony;
- (b) second degree felony is as if the conviction were for a first degree felony; or
- (c) first degree felony remains the penalty for a first degree penalty except:
 - (i) the convicted person is not eligible for probation; and
 - (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

- (A) the defendant is the person who was convicted or committed;
- (B) the defendant was represented by counsel or had waived counsel; or
- (C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told until after it returns its verdict on the underlying felony charge, of the:

- (i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or
- (ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) [~~Prior to~~] Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

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(iii) [~~Prior to~~] Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 160. Section **76-3-406** is amended to read:

76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,

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Commitment and Treatment of [~~Mentally III~~] Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence shall not be suspended, the court shall not enter a judgment for a lower category of offense, and hospitalization shall not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

- (1) Section 76-5-202, aggravated murder;
- (2) Section 76-5-203, murder;
- (3) Section 76-5-301.1, child kidnaping;
- (4) Section 76-5-302, aggravated kidnaping;
- (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
- (6) Section 76-5-402.1, rape of a child;
- (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2 (1)(b), (1)(c), or (2);
- (8) Section 76-5-402.3, object rape of a child;
- (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);
- (10) Section 76-5-403.1, sodomy on a child;
- (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);
- (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- (13) Section 76-5-405, aggravated sexual assault; or
- (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).

Section 161. Section **76-5-109** is amended to read:

76-5-109. Child abuse -- Child abandonment.

- (1) As used in this section:
 - (a) "Child" means a human being who is under 18 years of age.
 - (b) (i) "Child abandonment" means that a parent or legal guardian of a child:
 - (A) intentionally ceases to maintain physical custody of the child;
 - (B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

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- (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
- (II) manifests an intent to permanently not resume physical custody of the child; or
- (III) for a period of at least 30 days:
 - (Aa) intentionally fails to resume physical custody of the child; and
 - (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- (ii) "Child abandonment" does not include:
 - (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
 - (B) giving legal consent to a court order for termination of parental rights:
 - (I) in a legal adoption proceeding; or
 - (II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.
- (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.
- (d) "Enterprise" is as defined in Section 76-10-1602.
- (e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:
 - (i) a bruise or other contusion of the skin;
 - (ii) a minor laceration or abrasion;
 - (iii) failure to thrive or malnutrition; or
 - (iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).
- (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
 - (A) seriously impairs the child's health;
 - (B) involves physical torture;
 - (C) causes serious emotional harm to the child; or
 - (D) involves a substantial risk of death to the child.
- (ii) "Serious physical injury" includes:
 - (A) fracture of any bone or bones;
 - (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;
 - (C) any burn, including burns inflicted by hot water, or those caused by placing a hot

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object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or [~~retardation~~] intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

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- (i) the child suffers a serious physical injury; or
- (ii) the person or enterprise receives, directly or indirectly, any benefit.

(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform [~~Forfeitures~~]
Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

- (a) reasonable discipline or management of a child, including withholding privileges;
- (b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

- (i) in self-defense;
- (ii) in defense of others;
- (iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

Section 162. Section **76-5-110** is amended to read:

76-5-110. Abuse or neglect of a child with a disability.

(1) As used in this section:

(a) "Abuse" means:

- (i) inflicting physical injury, as that term is defined in Section 76-5-109;

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(ii) having the care or custody of a ~~[disabled]~~ child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a ~~[disabled]~~ child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a ~~[disabled]~~ child with a disability.

(c) [~~"Disabled child"~~] "Child with a disability" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a ~~[disabled]~~ child with a disability is guilty of a third degree felony.

(3) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

(b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a ~~[disabled]~~ child with a disability does not violate this section by selecting a treatment option for a ~~[disabled child's]~~ medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the ~~[disabled]~~ child with a disability.

Section 163. Section **77-13-1** is amended to read:

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77-13-1. Kinds of pleas.

(1) There are five kinds of pleas to an indictment or information:

- (a) not guilty;
- (b) guilty;
- (c) no contest;
- (d) not guilty by reason of insanity; and
- (e) guilty [~~and mentally ill~~] with a mental illness at the time of the offense.

(2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

Section 164. Section **77-16a-101** is amended to read:

CHAPTER 16a. COMMITMENT AND TREATMENT OF PERSONS WITH A MENTAL ILLNESS

77-16a-101. Definitions.

As used in this chapter:

- (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.
- (2) "Department" means the Department of Human Services.
- (3) "Executive director" means the executive director of the Department of Human

Services.

(4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(5) [~~"Mentally ill" means the same as that term is~~] "Mental illness" is as defined in Section 76-2-305.

(6) [~~"Mentally ill offender"~~] "Offender with a mental illness" means an individual who has been adjudicated guilty [~~and mentally ill~~] with a mental illness, including an individual who [~~is mentally retarded~~] has an intellectual disability.

[~~(7) "Mentally retarded" means the same as the term "mental retardation", defined in Section 62A-5-101.~~]

[~~(8)~~] (7) "UDC" means the Department of Corrections.

Section 165. Section **77-16a-102** is amended to read:

77-16a-102. Jury instructions.

(1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall

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instruct the jury that it may find the defendant:

- (a) guilty;
- (b) guilty [~~and mentally ill~~] with a mental illness at the time of the offense;
- (c) guilty of a lesser offense;
- (d) guilty of a lesser offense [~~and mentally ill~~] with a mental illness at the time of the offense;
- (e) not guilty by reason of insanity; or
- (f) not guilty.

(2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant [~~was mentally ill~~] had a mental illness at the time of the offense.

(b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental illness at the time of the offense, it shall return the general verdict of "guilty [~~and mentally ill~~] with a mental illness at the time of the offense."

(c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense [~~and mentally ill~~] with a mental illness at the time of the offense."

(d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant [~~was mentally ill~~] had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant [~~mentally ill~~] had a mental illness at the time of the offense.

(e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

(3) In determining whether a defendant should be found guilty [~~and mentally ill~~] with a

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mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.

(4) (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return a special verdict.

(b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

Section 166. Section **77-16a-103** is amended to read:

77-16a-103. Plea of guilty with a mental illness at the time of the offense.

(1) Upon a plea of guilty [~~and mentally ill~~] with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant [~~is~~] currently [~~mentally ill~~] has a mental illness.

(2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.

(3) (a) A defendant who tenders a plea of guilty [~~and mentally ill~~] with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty [~~and mentally ill~~] with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.

(b) If the defendant is later found not to [~~be currently mentally ill~~] have a current mental illness, that plea remains a valid plea of guilty [~~and mentally ill~~] with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.

(4) If the court concludes that the defendant [~~is currently mentally ill his~~] currently has a mental illness, the defendant's plea shall be accepted and [~~he~~] the defendant shall be sentenced in accordance with Section 77-16a-104.

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(5) (a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.

(b) Travel expenses shall be paid by the county where prosecution is commenced.

(c) Expenses of examination for defendants charged with violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

Section 167. Section **77-16a-104** is amended to read:

77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine present mental state.

(1) Upon a verdict of guilty [~~and mentally ill~~] with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

(2) The court may order the department to examine the defendant to determine [~~his~~] the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.

(3) If the court finds by clear and convincing evidence that the defendant [~~is currently mentally ill, it~~] currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who [~~is not mentally ill~~] does not have a mental illness and who is convicted of the same offense, and:

(a) commit [~~him~~] the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:

(i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and

(ii) the court finds by clear and convincing evidence that:

(A) because of [~~his~~] the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing [~~his~~] the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

(B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;

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(b) order probation in accordance with Section 77-16a-201; or

(c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.

(4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall, ~~[prior to]~~ before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.

(5) If the court finds that the defendant ~~[is not currently mentally ill, it]~~ does not currently have a mental illness, the court shall sentence the defendant as it would any other defendant.

(6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection 77-16a-103(5).

Section 168. Section **77-16a-201** is amended to read:

77-16a-201. Probation.

(1) (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty ~~[and mentally ill]~~ with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether ~~[he is or has been mentally ill]~~ the offender has, or had, a mental illness.

(2) The period of probation for a felony offense committed by a person who has been found guilty ~~[and mentally ill]~~ with a mental illness at the time of the offense may be for no less than five years. Probation for those offenders may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with

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the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release [~~a mentally ill offender~~] an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that [~~he~~] the offender:

(a) poses an immediate physical danger to [~~himself~~] self or others, including jeopardizing [~~his~~] the offender's own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) [~~A mentally ill offender~~] An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Section 169. Section **77-16a-202** is amended to read:

77-16a-202. Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing [~~a mentally ill~~] an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:

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

(b) sentence the offender to a term of imprisonment and order that [~~he~~] the offender be

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

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of ~~[a mentally ill]~~ an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

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

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services ~~[to]~~ for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 170. Section **77-16a-203** is amended to read:

77-16a-203. Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each ~~[mentally ill]~~ offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

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(b) If the offender [~~is mentally retarded~~] has an intellectual disability, the review team shall include at least one individual who is a designated [~~mental retardation~~] intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

- (i) current mental condition;
- (ii) progress since commitment; and
- (iii) prognosis; and

(b) that includes a recommendation regarding whether the [~~mentally ill~~] offender with a mental illness should be:

- (i) transferred to UDC; or
- (ii) remain in the custody of the department.

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

- (i) [~~is~~] no longer [~~mentally ill~~] has a mental illness; or
- (ii) [~~is still mentally ill~~] has a mental illness and may continue to be a danger to [~~himself~~] self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and
- (iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

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

- (i) all available clinical facts;
- (ii) the diagnosis;
- (iii) the course of treatment received at the mental health facility;
- (iv) the prognosis for remission of symptoms;
- (v) the potential for recidivism;

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(vi) an estimation of the offender's dangerousness, either to ~~[himself]~~ self or others;
and

(vii) recommendations for future treatment.

Section 171. Section **77-16a-204** is amended to read:

77-16a-204. UDC acceptance of transfer of persons found guilty with a mental illness -- Retransfer from UDC to department for admission to the Utah State Hospital.

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

(2) The transfer team shall concur in the recommendation if ~~[it]~~ the transfer team determines that UDC can provide the ~~[mentally ill]~~ offender with a mental illness with adequate mental health treatment.

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

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

(5) UDC shall notify the board whenever ~~[a mentally ill]~~ an offender with a mental illness is transferred from the department to UDC.

(6) When ~~[a mentally ill]~~ an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State

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Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

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

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

Section 172. Section **77-16a-205** is amended to read:

77-16a-205. Parole.

(1) When [~~a mentally ill~~] an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.

(2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the [~~mentally ill~~] offender with a mental illness, including:

- (a) all available clinical facts;
- (b) the diagnosis;
- (c) the course of treatment received at the mental health facility;
- (d) the prognosis for remission of symptoms;
- (e) potential for recidivism;
- (f) an estimation of the [~~mentally ill offender's~~] dangerousness of the offender with a mental illness either to [~~himself~~] self or others; and
- (g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the [~~mentally ill~~] offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4) UDC, through Adult Probation and Parole, shall monitor the status of [~~a mentally ill~~] an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

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(5) The period of parole may be no less than five years, or until expiration of the defendant's sentence, whichever occurs first. The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Section 173. Section **77-16a-302** is amended to read:

77-16a-302. Persons found not guilty by reason of insanity -- Disposition.

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant [~~is~~] currently [~~mentally ill~~] has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant [~~is still mentally ill~~] has a mental illness; and

(b) because of that mental illness the defendant presents a substantial danger to [~~himself~~] self or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had [~~he~~] the defendant been convicted and received the maximum sentence for the crime of which [~~he~~] the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 174. Section **77-16a-304** is amended to read:

77-16a-304. Review after commitment.

(1) (a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months.

(b) The team described in Subsection (1)(a) shall include:

(i) at least one psychiatrist; and

(ii) if the defendant [~~is mentally retarded~~] has an intellectual disability, at least one staff member who is a designated [~~mental retardation~~] intellectual disability professional[~~, as defined in Section 62A-5-101~~].

(2) If the review team described in Subsection (1) finds that the defendant has

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recovered from the defendant's mental illness, or, that the defendant [~~is~~] still [~~mentally ill~~] has a mental illness but does not present a substantial danger to [~~himself~~] self or others, the executive director, or the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and

(b) provide the court with a report stating the facts that form the basis for the recommendation.

(3) (a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.

(b) The court clerk shall provide notice of the date and time of the hearing to:

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.

(4) (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:

(i) [~~is~~] no longer [~~mentally ill~~] has a mental illness; or

(ii) [~~is mentally ill~~] has a mental illness, but no longer presents a substantial danger to [~~himself~~] self or others.

(b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:

(i) [~~is still mentally ill~~] has a mental illness;

(ii) is a substantial danger to [~~himself~~] self or others; and

(iii) can be controlled adequately if conditionally released with treatment as a condition of release.

(c) The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from [~~his~~] the defendant's mental illness;

(ii) is a substantial danger to [~~himself~~] self or others; and

(iii) cannot adequately be controlled if conditionally released on supervision.

(d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a

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defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to [~~himself~~] self or others.

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Section 175. Section **77-16a-306** is amended to read:

77-16a-306. Continuing review -- Discharge.

(1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from [~~his~~] the defendant's mental illness, or [~~if still mentally ill~~], if the defendant has a mental illness, no longer presents a substantial danger to [~~himself~~] self or others, it shall notify the executive director of its findings.

(2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.

(3) The court may not discharge an individual whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to [~~himself~~] self or others.

Section 176. Section **77-18-1** is amended to read:

77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,

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Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty [~~and mentally ill~~] with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report

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and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) [~~Prior to~~] Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The presentence investigation report shall include:

(i) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1; and

(ii) recommendations for treatment of the offender.

(e) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the

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court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support the defendant is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on

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probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

- (A) a diagnosed learning disability; or
- (B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not

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constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court

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for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the

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circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

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

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

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Section 177. Section **77-18-1.1** is amended to read:

77-18-1.1. Screening, assessment, and treatment.

(1) As used in this section:

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(a) "Assessment" has the same meaning as in Section 41-6a-501.

(b) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~]
with a mental illness, or no contest; and

(ii) conviction of any crime or offense.

(c) "Screening" has the same meaning as in Section 41-6a-501.

(d) "Substance abuse treatment" means treatment obtained through a substance abuse program that is licensed by the Office of Licensing within the Department of Human Services.

(2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources, order offenders convicted of a felony to:

(a) participate in a screening prior to sentencing;

(b) participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and

(c) participate in substance abuse treatment if:

(i) the assessment indicates treatment to be appropriate;

(ii) the court finds treatment to be appropriate for the offender; and

(iii) the court finds the offender to be an appropriate candidate for community-based supervision.

(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court [~~prior to~~] before sentencing of the offender.

(4) Monies appropriated by the Legislature to assist in the funding of the screening, assessment, substance abuse treatment, and supervision provided under this section are not subject to any requirement regarding matching funds from a state or local governmental entity.

Section 178. Section **77-18-8.3** is amended to read:

77-18-8.3. Special condition of sentence during incarceration -- Penalty.

(1) At the time of sentence, the court may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal

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act for which the defendant is convicted.

(2) The court's order may prohibit the defendant from contracting with any person, firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

(3) The court may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The court may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the court's order may be found to be contempt.

(5) The Department of Corrections shall notify the attorney general of any alleged violation of the court's order under this section.

(6) The Board of Pardons and Parole and any county jail administrator may consider the court's finding in any incarceration release decision concerning the incarcerated defendant.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Section 179. Section **77-18-8.5** is amended to read:

77-18-8.5. Special condition of probation -- Penalty.

(1) In accordance with Subsections 77-18-1(2) and (8), the court may place the defendant on probation and as a condition of probation, the court may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal act for which the defendant is convicted.

(2) The court's order may prohibit the defendant from contracting with any person,

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firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

(3) The court may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The court may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the court's order shall be found to be in contempt.

(5) Adult Probation and Parole shall notify the attorney general of any alleged violation of the court's order under this section.

(6) The violation of the court's order shall be considered a violation of probation.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Section 180. Section **77-27-2** is amended to read:

77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.

(1) There is created the Board of Pardons and Parole. The board shall consist of five full-time members and not more than five pro tempore members to be appointed by the governor with the consent of the Senate as provided in this section. The members of the board shall be resident citizens of the state. The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) (i) The full-time board members shall serve terms of five years. The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.

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(ii) The pro tempore members shall serve terms of five years, beginning on March 1 of the year of appointment, with no more than one pro tempore member term beginning or expiring in the same calendar year. If a pro tempore member vacancy occurs, the board may submit the names of not fewer than three or more than five persons to the governor for appointment to fill the vacancy.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state. A member may not engage in any occupation or business inconsistent with the member's duties.

(e) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any location within or without the state, or for the purpose of exercising any duty or authority of the board. Action taken by a majority of the board regarding whether parole, pardon, commutation, termination of sentence, or remission of fines or forfeitures may be granted or restitution ordered in individual cases is deemed the action of the board. A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute. However, a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(f) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board. When any of these actions are approved and confirmed by the board and filed in its office, they are considered to be the action of the board and have the same effect as if originally made by the board.

(g) When a full-time board member is absent or in other extraordinary circumstances the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member. Pro tempore members shall

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receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the Department of Corrections.

(3) (a) Except as provided in Subsection (3)(b), the Commission on Criminal and Juvenile Justice shall:

(i) recommend five applicants to the governor for a full-time member appointment to the Board of Pardons and Parole; and

(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.

(4) (a) The board shall appoint an individual to serve as its mental health adviser and may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77, Chapter 16a, Commitment and Treatment of ~~[Mentally ill]~~ Persons with a Mental Illness. The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty ~~[and mentally ill]~~ with a mental illness, in accordance with Title 77, Chapter 16a.

(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the Department of Corrections or the Utah State Hospital.

(i) The Board of Pardons and Parole may review outside employment by the mental health advisor.

(ii) The Board of Pardons and Parole shall develop rules governing employment with entities other than the board by the mental health advisor for the purpose of prohibiting a conflict of interest.

(c) The mental health adviser shall:

(i) act as liaison for the board with the Department of Human Services and local mental health authorities;

(ii) educate the members of the board regarding the needs and special circumstances of ~~[mentally ill]~~ persons with a mental illness in the criminal justice system;

(iii) in cooperation with the Department of Corrections, monitor the status of persons

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in the prison who have been found guilty [~~and mentally ill~~] with a mental illness;

(iv) monitor the progress of other persons under the board's jurisdiction who [~~are mentally ill~~] have a mental illness;

(v) conduct hearings as necessary in the preparation of reports and recommendations;
and

(vi) perform other duties as assigned by the board.

Section 181. Section **77-27-5.3** is amended to read:

77-27-5.3. Meritless and bad faith litigation.

(1) For purposes of this section:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) In any case filed in state or federal court in which a prisoner submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the prisoner.

Section 182. Section **77-27-10.5** is amended to read:

77-27-10.5. Special condition of parole -- Penalty.

(1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release the defendant on parole and as a condition of parole, the board may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal act for which the defendant is convicted.

(2) The order may prohibit the defendant from contracting with any person, firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

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(3) The board may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The board may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

(5) Adult Probation and Parole shall notify the board of any alleged violation of the board's order under this section.

(6) The violation of the board's order shall be considered a violation of parole.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Section 183. Section **77-33-5** is amended to read:

77-33-5. Rendition procedure inapplicable to person confined as insane or having a mental illness or under sentence of death.

This act does not apply to any person in this state confined as insane or [~~mentally ill~~] as having a mental illness or under sentence of death.

Section 184. Section **77-38-302** is amended to read:

77-38-302. Definitions.

As used in this part:

(1) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but [~~mentally ill~~] having a mental illness regardless of whether the sentence was imposed or suspended.

(2) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

(3) "Memorabilia" means any tangible property of a person convicted of a first degree or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

(4) "Profit" means any income or benefit over and above the fair market value of the

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property that is received upon the sale or transfer of memorabilia.

Section 185. Section **78A-2-302** is amended to read:

78A-2-302. Impecunious litigants -- Affidavit.

(1) For purposes of Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) As provided in this chapter, any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.

(3) The affidavit shall contain complete information on the party's:

- (a) identity and residence;
- (b) amount of income, including government financial support, alimony, child support;
- (c) assets owned, including real and personal property;
- (d) business interests;
- (e) accounts receivable;
- (f) securities, checking and savings account balances;
- (g) debts; and
- (h) monthly expenses.

(4) If the party is a prisoner, he shall also disclose the amount of money held in his prisoner trust account at the time the affidavit is executed as provided in Section 78A-2-305.

(5) In addition to the financial disclosures, the affidavit shall state the following:

I, A B, do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Section 186. Section **78A-6-103** is amended to read:

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

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(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed [~~prior to~~] before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part 8, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(h) the treatment or commitment of a [~~mentally retarded~~] minor who has an intellectual disability;

(i) a minor who is a habitual truant from school;

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(j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

(k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(m) the treatment or commitment of a [~~mentally ill~~] child with a mental illness. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

(n) the commitment of a child in accordance with Section 62A-15-301;

(o) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(p) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent

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efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

Section 187. Section **78A-6-117 (Superseded 07/01/11)** is amended to read:

78A-6-117 (Superseded 07/01/11). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.

(1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(2) Upon adjudication the court may make the following dispositions by court order:

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(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Subsection (2)(m)(iii).

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,

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Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

(B) [~~Prior to~~] Before the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) [~~Prior to~~] Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.

(d) (i) The court may commit a minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care

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and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78A-6-606 are governed only by

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Section 78A-6-606.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.

(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.

(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.

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(n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(n)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the child to be committed to the physical custody of a local

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mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

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(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

Section 188. Section **78A-6-117 (Effective 07/01/11)** is amended to read:

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78A-6-117 (Effective 07/01/11). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.

(1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Subsection (2)(m)(iii).

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

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(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A, Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.

(d) (i) The court may commit a minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

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(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the

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court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as

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compensatory service hours.

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.

(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.

(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.

(n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(n)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

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(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

- (A) parent-time by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and
- (D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or

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as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

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(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

Section 189. Section **78A-11-108** is amended to read:

78A-11-108. Involuntary disability retirement or removal of a judge.

(1) The commission shall recommend and issue an order for the removal or involuntary retirement of a judge of any court of this state, in accordance with the procedure outlined in this section, for a disability that seriously interferes with the performance of the judge's judicial duties and which is, or is likely to become, of a permanent character.

(2) The commission shall order a medical examination and report.

(3) The commission in recommending an order of involuntary retirement or removal of a judge for a disability, shall base it on the evaluation and recommendations submitted by one or more medical examiners or physicians, including an examination of essential statements submitted by either bar or judicial associations or committees certifying that:

(a) the judge ~~[is mentally or physically disabled]~~ acquires a physical or mental disability and this disability seriously interferes with the performance of the judge's judicial duties; and

(b) the judge's incapacity is likely to continue and be permanent and that the judge

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should be involuntarily retired or removed.

(4) (a) The Supreme Court shall review the commission's proceedings as to both law and fact and may permit the introduction of additional evidence.

(b) After its review, the Supreme Court shall issue its order implementing, rejecting, or modifying the commission's order.

(5) Retirement or involuntary retirement as provided in this chapter shall be processed through the Utah State Retirement Office, and the judge retiring shall meet the requirements for retirement as specified in this chapter.

(6) Upon an order for involuntary retirement, the judge shall retire with the same rights and privileges as if the judge retired pursuant to statute.

Section 190. Section **78B-3-110** is amended to read:

78B-3-110. Defense to civil action for damages resulting from commission of crime.

(1) A person may not recover from the victim of a crime for personal injury or property damage if the person:

(a) entered the property of the victim with criminal intent and the injury or damage occurred while the person was on the victim's property; or

(b) committed a crime against the victim, during which the damage or injury occurred.

(2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that:

(a) ~~[his]~~ the person's actions did not constitute a felony; and

(b) ~~[his]~~ the person's culpability was less than the person from whom recovery is sought.

(3) Subsections (1) and (2) apply to any next-of-kin, heirs, or personal representatives of the person if the person ~~[is disabled]~~ acquires a disability or is killed.

(4) Subsections (1), (2), and (3) do not apply if the person committing or attempting to commit the crime has clearly retreated from the criminal activity.

(5) "Clearly retreated" means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Section 191. **Effective date.**

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This bill takes effect on May 10, 2011, except that the amendments to Section 78A-6-117 (Effective 07/01/11) take effect on July 1, 2011.

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Legislative Review Note

~~as of 11-16-10 2:42 PM~~

~~Office of Legislative Research and General Counsel}~~