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CIVIL COMMITMENT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to civil commitment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ adds additional members to the Forensic Mental Health Coordinating Council;
- ▶ modifies provisions relating to civil commitment, including provisions relating to discharge and periodic review of an individual who is civilly committed;
- ▶ modifies provisions relating to competency to stand trial, including provisions relating to a finding of competency and the process that follows a finding of competency; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-602, as last amended by Laws of Utah 2018, Chapter 322

62A-15-605, as last amended by Laws of Utah 2015, Chapter 403



- 28 [62A-15-626](#), as last amended by Laws of Utah 2008, Chapter 3
- 29 [62A-15-631](#), as last amended by Laws of Utah 2018, Chapter 322
- 30 [62A-15-632](#), as last amended by Laws of Utah 2018, Chapter 322
- 31 [62A-15-636](#), as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 32 Chapter 8
- 33 [62A-15-637](#), as last amended by Laws of Utah 2018, Chapter 322
- 34 [62A-15-703](#), as last amended by Laws of Utah 2018, Chapter 322
- 35 [77-15-2](#), as last amended by Laws of Utah 2018, Chapter 147
- 36 [77-15-3.5](#), as enacted by Laws of Utah 2018, Chapter 147
- 37 [77-15-4](#), as last amended by Laws of Utah 2018, Chapter 147
- 38 [77-15-5](#), as last amended by Laws of Utah 2018, Chapter 147
- 39 [77-15-6](#), as last amended by Laws of Utah 2018, Chapter 147
- 40 [77-16a-302](#), as last amended by Laws of Utah 2011, Chapter 366

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

43 Section 1. Section **62A-15-602** is amended to read:

44 **62A-15-602. Definitions.**

45 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
 46 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
 47 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part
 48 12, Essential Treatment and Intervention Act:

- 49 (1) "Adult" means an individual 18 years of age or older.
- 50 (2) "Approved treatment facility or program" means a treatment provider that meets the
 51 standards described in Subsection [62A-15-103\(2\)\(a\)\(v\)](#).
- 52 (3) "Commitment to the custody of a local mental health authority" means that an adult
 53 is committed to the custody of the local mental health authority that governs the mental health
 54 catchment area where the adult resides or is found.
- 55 (4) "Community mental health center" means an entity that provides treatment and
 56 services to a resident of a designated geographical area, that operates by or under contract with
 57 a local mental health authority, and that complies with state standards for community mental
 58 health centers.

59 (5) "Designated examiner" means:

60 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
61 specially qualified by training or experience in the diagnosis of mental or related illness; or

62 (b) a licensed mental health professional designated by the division as specially
63 qualified by training and who has at least five [~~years~~] years continual experience in the
64 treatment of mental illness.

65 (6) "Designee" means a physician who has responsibility for medical functions
66 including admission and discharge, an employee of a local mental health authority, or an
67 employee of a person that has contracted with a local mental health authority to provide mental
68 health services under Section [17-43-304](#).

69 (7) "Discharge" means:

70 (a) to release an individual from:

71 (i) the Utah State Hospital; or

72 (ii) a secure facility that provides acute inpatient psychiatric services under contract
73 with the department or a local mental health authority; or

74 (b) to dismiss a court order requiring civil commitment of a forensic-track patient.

75 [~~(7)~~] (8) "Essential treatment" and "essential treatment and intervention" mean
76 court-ordered treatment at a local substance abuse authority or an approved treatment facility or
77 program for the treatment of an adult's substance use disorder.

78 (9) "Forensic-track patient" means an individual who is civilly committed to a secure
79 facility and whose commitment is ordered after a court:

80 (a) (i) finds the individual is incompetent to proceed under Section [77-15-6](#); and

81 (ii) finds there is not a substantial probability that the individual will become
82 competent in the foreseeable future; or

83 (b) (i) finds the individual has served the maximum term of commitment under
84 Subsection [77-16a-302\(3\)](#); and

85 (ii) orders the individual to be committed under this chapter.

86 [~~(8)~~] (10) "Harmful sexual conduct" means the following conduct upon an individual
87 without the individual's consent, including the nonconsensual circumstances described in
88 Subsections [76-5-406\(1\)](#) through (12):

89 (a) sexual intercourse;

90 (b) penetration, however slight, of the genital or anal opening of the individual;

91 (c) any sexual act involving the genitals or anus of the actor or the individual and the
92 mouth or anus of either individual, regardless of the gender of either participant; or

93 (d) any sexual act causing substantial emotional injury or bodily pain.

94 [~~(9)~~] (11) "Institution" means a hospital or a health facility licensed under Section
95 [26-21-8](#).

96 [~~(10)~~] (12) "Local substance abuse authority" means the same as that term is defined in
97 Section [62A-15-102](#) and described in Section [17-43-201](#).

98 [~~(11)~~] (13) "Mental health facility" means the Utah State Hospital or other facility that
99 provides mental health services under contract with the division, a local mental health
100 authority, a person that contracts with a local mental health authority, or a person that provides
101 acute inpatient psychiatric services to a patient.

102 [~~(12)~~] (14) "Mental health officer" means an individual who is designated by a local
103 mental health authority as qualified by training and experience in the recognition and
104 identification of mental illness, to:

105 (a) apply for and provide certification for a temporary commitment; or

106 (b) assist in the arrangement of transportation to a designated mental health facility.

107 [~~(13)~~] (15) "Mental illness" means:

108 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
109 behavioral, or related functioning; or

110 (b) the same as that term is defined in:

111 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
112 published by the American Psychiatric Association; or

113 (ii) the current edition of the International Statistical Classification of Diseases and
114 Related Health Problems.

115 (16) "Other qualified examiner" means a licensed mental health professional that the
116 division designates as qualified by training and education to conduct a risk assessment.

117 [~~(14)~~] (17) "Patient" means an individual who is:

118 (a) under commitment to the custody or to the treatment services of a local mental
119 health authority; or

120 (b) undergoing essential treatment and intervention.

121 ~~[(15)]~~ (18) "Physician" means an individual who is:

122 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

123 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical

124 Practice Act.

125 (19) "Risk assessment" means a forensic evaluation of a forensic-track patient that
126 considers:

127 (a) whether the forensic-track patient is a danger to self or others;

128 (b) any pending criminal charges against the forensic-track patient;

129 (c) the forensic-track patient's criminal history;

130 (d) the risk to the community posed if the forensic-track patient is discharged;

131 (e) the availability of treatment for the forensic-track patient in the community; and

132 (f) whether a local mental health authority is able to provide appropriate treatment to
133 the forensic-track patient.

134 ~~[(16)]~~ (20) "Serious bodily injury" means bodily injury that involves a substantial risk
135 of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
136 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

137 ~~[(17)]~~ (21) "Substantial danger" means that due to mental illness, an individual is at
138 serious risk of:

139 (a) suicide;

140 (b) serious bodily self-injury;

141 (c) serious bodily injury because the individual is incapable of providing the basic
142 necessities of life, including food, clothing, or shelter;

143 (d) causing or attempting to cause serious bodily injury to another individual; or

144 (e) engaging in harmful sexual conduct.

145 ~~[(18)]~~ (22) "Treatment" means psychotherapy, medication, including the administration
146 of psychotropic medication, or other medical treatments that are generally accepted medical or
147 psychosocial interventions for the purpose of restoring ~~[the patient]~~ an individual to an optimal
148 level of functioning in the least restrictive environment.

149 Section 2. Section **62A-15-605** is amended to read:

150 **62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and**
151 **purpose.**

152 (1) There is established the Forensic Mental Health Coordinating Council composed of
153 the following members:

154 (a) the director of the Division of Substance Abuse and Mental Health or the director's
155 appointee;

156 (b) the superintendent of the state hospital or the superintendent's appointee;

157 (c) the executive director of the Department of Corrections or the executive director's
158 appointee;

159 (d) a member of the Board of Pardons and Parole or ~~[its]~~ the Board of Pardons and
160 Parole's appointee;

161 (e) the attorney general or the attorney general's appointee;

162 (f) a county or district attorney from:

163 (i) a county of the first class, as classified in Section [17-50-501](#); and

164 (ii) a county of the second, third, fourth, fifth, or sixth class, as classified in Section
165 [17-50-501](#);

166 (g) an attorney practicing criminal defense recommended by the Utah Association of
167 Criminal Defense Lawyers;

168 ~~[(f)]~~ (h) the director of the Division of Services for People with Disabilities or the
169 director's appointee;

170 ~~[(g)]~~ (i) the director of the Division of Juvenile Justice Services or the director's
171 appointee;

172 ~~[(h)]~~ (j) the director of the Commission on Criminal and Juvenile Justice or the
173 director's appointee;

174 ~~[(i)]~~ (k) the state court administrator or the administrator's appointee;

175 ~~[(j)]~~ (l) the state juvenile court administrator or the administrator's appointee;

176 ~~[(k)]~~ (m) a representative from a local mental health authority or an organization,
177 excluding the state hospital that provides mental health services under contract with the
178 Division of Substance Abuse and Mental Health or a local mental health authority, as
179 appointed by the director of the division;

180 ~~[(l)]~~ (n) the executive director of the Utah Developmental Disabilities Council or the
181 director's appointee; and

182 ~~[(m)]~~ (o) other individuals, including individuals from appropriate advocacy

183 organizations with an interest in the mission described in Subsection (3), as appointed by the
184 members described in Subsections (1)(a) through [(†)] (n).

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

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

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

189 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
190 63A-3-107.

191 (3) The purpose of the Forensic Mental Health Coordinating Council is to:

192 (a) advise the director regarding the state hospital admissions policy for individuals in
193 the custody of the Department of Corrections;

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

196 (c) advise the executive director of the Department of Corrections regarding
197 department policy related to the care of individuals in the custody of the Department of
198 Corrections who are mentally ill;

199 (d) promote communication between and coordination among all agencies dealing with
200 individuals with an intellectual disability or mental illness who become involved in the civil
201 commitment system or in the criminal or juvenile justice system;

202 (e) study, evaluate, and recommend changes to laws and procedures relating to
203 individuals with an intellectual disability or mental illness who become involved in the civil
204 commitment system or in the criminal or juvenile justice system;

205 (f) identify and promote the implementation of specific policies and programs to deal
206 fairly and efficiently with individuals with an intellectual disability or mental illness who
207 become involved in the civil commitment system or in the criminal or juvenile justice system;
208 and

209 (g) promote judicial education relating to individuals with an intellectual disability or
210 mental illness who become involved in the civil commitment system or in the criminal or
211 juvenile justice system.

212 Section 3. Section 62A-15-626 is amended to read:

213 **62A-15-626. Release from commitment.**

214 (1) A local mental health authority or [its] the mental health authority's designee shall
215 release from commitment any [~~person~~] individual who is not a forensic-track patient and who,
216 in the opinion of the local mental health authority or [its] the mental health authority's
217 designee, has recovered or no longer meets the criteria specified in Section [62A-15-631](#).

218 (2) A local mental health authority or [its] the mental health authority's designee may
219 release from commitment any patient who is not a forensic-track patient and whose
220 commitment is determined to be no longer advisable except as provided by Section [78A-6-120](#),
221 but an effort shall be made to assure that any further supportive services required to meet the
222 patient's needs upon release will be provided.

223 (3) When a patient has been committed to a local mental health authority by judicial
224 process, the local mental health authority shall follow the procedures described in Sections
225 [62A-15-636](#) and [62A-15-637](#).

226 Section 4. Section **62A-15-631** is amended to read:

227 **62A-15-631. Involuntary commitment under court order -- Examination --**
228 **Hearing -- Power of court -- Findings required -- Costs.**

229 (1) A responsible [~~person~~] individual who has reason to know of an adult's mental
230 illness and the condition or circumstances that have led to the adult's need to be involuntarily
231 committed may initiate an involuntary commitment court proceeding by filing, in the district
232 court in the county where the proposed patient resides or is found, a written application that
233 includes:

234 (a) unless the court finds that the information is not reasonably available, the proposed
235 patient's:

236 (i) name;

237 (ii) date of birth; and

238 (iii) social security number; and

239 (b) (i) a certificate of a licensed physician or a designated examiner stating that within
240 the seven-day period immediately preceding the certification, the physician or designated
241 examiner examined the proposed patient and is of the opinion that the proposed patient has a
242 mental illness and should be involuntarily committed; or

243 (ii) a written statement by the applicant that:

244 (A) the proposed patient has been requested to, but has refused to, submit to an

245 examination of mental condition by a licensed physician or designated examiner;

246 (B) is sworn to under oath; and

247 (C) states the facts upon which the application is based.

248 (2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may
249 require the applicant to consult with the appropriate local mental health authority, and the court
250 may direct a mental health professional from that local mental health authority to interview the
251 applicant and the proposed patient to determine the existing facts and report them to the court.

252 (b) The consultation described in Subsection (2)(a):

253 (i) may take place at or before the hearing; and

254 (ii) is required if the local mental health authority appears at the hearing.

255 (3) If the court finds from the application, from any other statements under oath, or
256 from any reports from a mental health professional that there is a reasonable basis to believe
257 that the proposed patient has a mental illness that poses a substantial danger to self or others
258 requiring involuntary commitment pending examination and hearing; or, if the proposed patient
259 has refused to submit to an interview with a mental health professional as directed by the court
260 or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental
261 health officer or peace officer, to immediately place the proposed patient in the custody of a
262 local mental health authority or in a temporary emergency facility as provided in Section
263 [62A-15-634](#) to be detained for the purpose of examination.

264 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
265 the allegations of the application and any reported facts, together with a copy of any official
266 order of detention, shall be provided by the court to a proposed patient before, or upon,
267 placement in the custody of a local mental health authority or, with respect to any proposed
268 patient presently in the custody of a local mental health authority whose status is being changed
269 from voluntary to involuntary, upon the filing of an application for that purpose with the court.
270 A copy of that order of detention shall be maintained at the place of detention.

271 (5) Notice of commencement of those proceedings shall be provided by the court as
272 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
273 legal counsel for the parties involved, the local mental health authority or [its] the local mental
274 health authority's designee, and any other persons whom the proposed patient or the court shall
275 designate. That notice shall advise those persons that a hearing may be held within the time

276 provided by law. If the proposed patient has refused to permit release of information necessary
277 for provisions of notice under this subsection, the extent of notice shall be determined by the
278 court.

279 (6) Proceedings for commitment of an individual under the age of 18 years to a local
280 mental health authority may be commenced in accordance with Part 7, Commitment of Persons
281 Under Age 18 to Division of Substance Abuse and Mental Health.

282 (7) The district court may, in ~~[its]~~ the district court's discretion, transfer the case to any
283 other district court within this state, provided that the transfer will not be adverse to the interest
284 of the proposed patient.

285 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance
286 of a judicial order, or after commitment of a proposed patient to a local mental health authority
287 or ~~[its]~~ local mental health authority's designee under court order for detention or examination,
288 the court shall appoint two designated examiners:

289 (a) who did not sign the civil commitment application nor the civil commitment
290 certification under Subsection (1);

291 (b) one of whom is a licensed physician; and

292 (c) one of whom may be designated by the proposed patient or the proposed patient's
293 counsel, if that designated examiner is reasonably available.

294 (9) The court shall schedule a hearing to be held within 10 calendar days ~~[of]~~ after the
295 day on which the designated examiners are appointed.

296 (10) The designated examiners shall:

297 (a) conduct their examinations separately;

298 (b) conduct the examinations at the home of the proposed patient, at a hospital or other
299 medical facility, or at any other suitable place that is not likely to have a harmful effect on the
300 proposed patient's health;

301 (c) inform the proposed patient, if not represented by an attorney:

302 (i) that the proposed patient does not have to say anything;

303 (ii) of the nature and reasons for the examination;

304 (iii) that the examination was ordered by the court;

305 (iv) that any information volunteered could form part of the basis for the proposed
306 patient's involuntary commitment; and

307 (v) that findings resulting from the examination will be made available to the court;
308 and

309 (d) within 24 hours of examining the proposed patient, report to the court, orally or in
310 writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as
311 described in Section 62A-15-625, or has acceptable programs available to the proposed patient
312 without court proceedings. If the designated examiner reports orally, the designated examiner
313 shall immediately send a written report to the clerk of the court.

314 (11) If a designated examiner is unable to complete an examination on the first attempt
315 because the proposed patient refuses to submit to the examination, the court shall fix a
316 reasonable compensation to be paid to the examiner.

317 (12) If the local mental health authority, ~~[its]~~ the local mental health authority's
318 designee, or a medical examiner determines before the court hearing that the conditions
319 justifying the findings leading to a commitment hearing no longer exist, the local mental health
320 authority, ~~[its]~~ the local mental health authority's designee, or the medical examiner shall
321 immediately report that determination to the court.

322 (13) The court may terminate the proceedings and dismiss the application at any time,
323 including ~~[prior to the hearing]~~ before the day on which the hearing is held, if the designated
324 examiners or the local mental health authority or ~~[its]~~ the local mental health authority's
325 designee informs the court that the proposed patient:

- 326 (a) is not mentally ill;
327 (b) has agreed to voluntary commitment, as described in Section 62A-15-625; or
328 (c) has acceptable options for treatment programs that are available without court
329 proceedings.

330 (14) Before the hearing, an opportunity to be represented by counsel shall be afforded
331 to every proposed patient, and if neither the proposed patient nor others provide counsel, the
332 court shall appoint counsel and allow counsel sufficient time to consult with the proposed
333 patient before the hearing. In the case of an indigent proposed patient, the payment of
334 reasonable attorney fees for counsel, as determined by the court, shall be made by the county in
335 which the proposed patient resides or is found.

336 (15) (a) The proposed patient, the applicant, and all other persons to whom notice is
337 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to

338 present and cross-examine witnesses. The court may, in ~~[its]~~ the court's discretion, receive the
339 testimony of any other person. The court may allow a waiver of the proposed patient's right to
340 appear only for good cause shown, and that cause shall be made a matter of court record.

341 (b) The court is authorized to exclude all ~~[persons]~~ individuals not necessary for the
342 conduct of the proceedings and may, upon motion of counsel, require the testimony of each
343 examiner to be given out of the presence of any other examiners.

344 (c) The hearing shall be conducted in as informal a manner as may be consistent with
345 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
346 mental health of the proposed patient.

347 (d) The court shall consider all relevant historical and material information that is
348 offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah
349 Rules of Evidence.

350 (e) (i) A local mental health authority or ~~[its]~~ the local mental health authority's
351 designee, or the physician in charge of the proposed patient's care shall, at the time of the
352 hearing, provide the court with the following information:

- 353 (A) the detention order;
- 354 (B) admission notes;
- 355 (C) the diagnosis;
- 356 (D) any doctors' orders;
- 357 (E) progress notes;
- 358 (F) nursing notes; and
- 359 (G) medication records pertaining to the current commitment.

360 (ii) That information shall also be supplied to the proposed patient's counsel at the time
361 of the hearing, and at any time ~~[prior to the hearing]~~ before the time at which the hearing is
362 held upon request.

363 (16) ~~(a)~~ (a) The court shall order commitment of ~~[a]~~ an adult proposed patient ~~[who is 18~~
364 ~~years of age or older]~~ to a local mental health authority if, upon completion of the hearing and
365 consideration of the information presented in accordance with Subsection (15)(d), the court
366 finds by clear and convincing evidence that:

- 367 ~~[(a)]~~ (i) the proposed patient has a mental illness;
- 368 ~~[(b)]~~ (ii) because of the proposed patient's mental illness the proposed patient poses a

369 substantial danger to self or others;

370 ~~[(e)]~~ (iii) the proposed patient lacks the ability to engage in a rational decision-making
371 process regarding the acceptance of mental treatment as demonstrated by evidence of inability
372 to weigh the possible risks of accepting or rejecting treatment;

373 ~~[(d)]~~ (iv) there is no appropriate less-restrictive alternative to a court order of
374 commitment; and

375 ~~[(e)]~~ (v) the local mental health authority can provide the proposed patient with
376 treatment that is adequate and appropriate to the proposed patient's conditions and needs.

377 (b) In the absence of the required findings of the court after the hearing, the court shall
378 dismiss the proceedings.

379 (17) (a) The order of commitment shall designate the period for which the patient shall
380 be treated. When the patient is not under an order of commitment at the time of the hearing,
381 that period may not exceed six months without benefit of a review hearing. Upon such a
382 review hearing, to be commenced ~~[prior to the expiration of the previous order]~~ before the day
383 on which the previous order expires, an order for commitment may be for an indeterminate
384 period, if the court finds by clear and convincing evidence that the required conditions in
385 Subsection (16) will last for an indeterminate period.

386 (b) The court shall maintain a current list of all patients under ~~[its]~~ the court's order of
387 commitment. That list shall be reviewed to determine those patients who have been under an
388 order of commitment for the designated period. At least ~~[two weeks prior to the expiration of]~~
389 30 days before the day on which the designated period of any order of commitment still in
390 effect expires, the court that entered the original order shall inform the appropriate local mental
391 health authority or ~~[its]~~ the local mental health authority's designee. The local mental health
392 authority or ~~[its]~~ the local mental health authority's designee shall immediately reexamine the
393 reasons upon which the order of commitment was based. ~~[If the local mental health authority~~
394 ~~or its designee determines that the conditions justifying that commitment no longer exist, it~~
395 ~~shall discharge the patient from involuntary commitment and immediately report the discharge~~
396 ~~to the court. Otherwise, the court shall immediately appoint two designated examiners and~~
397 ~~proceed under Subsections (8) through (14).]~~

398 (18) (a) If, after reexamination under Subsection (17)(b), the local mental health
399 authority or the local mental health authority's designee determines that continued commitment

400 of a proposed patient is justified, the local mental health authority or the local mental health
401 authority's designee shall send a written report describing the reasons for the determination to
402 the court that issued the original order of commitment and all counsel of record.

403 (b) Upon receipt of the report described in Subsection (18)(a), the court shall:

404 (i) appoint two designated examiners; and

405 (ii) proceed in accordance with Subsections (8) through (14).

406 (c) Except as provided in Subsection (19), if, after reexamination under Subsection

407 (17)(b), the local mental health authority or the local mental health authority's designee

408 determines that the conditions justifying commitment of a patient no longer exist, the local

409 mental health authority or the local mental health authority's designee shall discharge the

410 patient from the local mental health authority's custody and immediately report the discharge to

411 the court that issued the original order of commitment.

412 (19) (a) If, after reexamination under Subsection (17)(b), the local mental health

413 authority or the local mental health authority's designee determines that the conditions

414 justifying commitment of a forensic-track patient no longer exist, the local mental health

415 authority or the local mental health authority's designee shall immediately notify the following

416 persons that the forensic-track patient will be discharged within 60 days:

417 (i) the court that adjudicated the forensic-track patient incompetent to proceed or not

418 guilty by reason of insanity;

419 (ii) the court that issued the original order of commitment; and

420 (iii) all counsel of record.

421 (b) If a counsel of record does not enter a renewed appearance within 10 days after the

422 day on which the counsel receives the notice described in Subsection (19)(a), the court shall

423 proceed in accordance with Subsection [62A-15-631](#)(14).

424 (c) (i) Within 15 days after the day on which a court or counsel of record receives the

425 notice described in Subsection (19)(a), the court or counsel shall notify all parties notified

426 under Subsection (19)(a) that the court or counsel requests a risk assessment of the

427 forensic-track patient.

428 (ii) A court or counsel shall retain a designated examiner or other qualified examiner at

429 the court or counsel's own expense.

430 (iii) The designated examiner or other qualified examiner shall complete the risk

431 assessment within 30 days after the day on which the designated examiner or qualified
432 examiner is retained.

433 (iv) The court or counsel of record shall immediately provide notice to the parties
434 notified under Subsection (19)(a) after receiving the risk assessment under Subsection
435 (19)(c)(iii).

436 (d) (i) The court shall conduct a hearing on the issue of discharge of the forensic-track
437 patient within 15 calendar days after the day on which the court receives the risk assessment
438 described in Subsection (19)(c).

439 (ii) The court may reschedule the hearing described in this Subsection (19)(d) for good
440 cause.

441 ~~[(e)]~~ (20) The local mental health authority or [its] the local mental health authority's
442 designee responsible for the care of a patient under an order of commitment for an
443 indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order
444 of indeterminate commitment was based. If the local mental health authority or [its] the local
445 mental health authority's designee determines that the conditions justifying [that] the
446 commitment of a patient who is not a forensic-track patient no longer exist, [that] the local
447 mental health authority or [its] the local mental health authority's designee shall discharge the
448 patient from [its] the local mental health authority's custody and immediately report the
449 discharge to the court. If the local mental health authority or [its] the local mental health
450 authority's designee determines that the conditions justifying that commitment continue to
451 exist, the local mental health authority or [its] the local mental health authority's designee shall
452 send a written report of those findings to the court. The patient and the patient's counsel of
453 record shall be notified in writing that the involuntary commitment will be continued, the
454 reasons for that decision, and that the patient has the right to a review hearing by making a
455 request to the court. Upon receiving the request, the court shall immediately appoint two
456 designated examiners and proceed [under] in accordance with Subsections (8) through (14).

457 ~~[(18)]~~ (21) Any patient committed as a result of an original hearing or a patient's
458 legally designated representative who is aggrieved by the findings, conclusions, and order of
459 the court entered in the original hearing has the right to a new hearing upon a petition filed with
460 the court within 30 days [of the entry of the court order] after the day on which the court enters
461 the order. The petition must allege error or mistake in the findings, in which case the court

462 shall appoint three impartial designated examiners previously unrelated to the case to conduct
463 an additional examination of the patient. The new hearing shall, in all other respects, be
464 conducted in the manner otherwise permitted.

465 ~~[(19)]~~ (22) ~~[Costs]~~ Unless otherwise specified, the cost of all proceedings under this
466 section shall be paid by the county in which the proposed patient resides or is found.

467 Section 5. Section **62A-15-632** is amended to read:

468 **62A-15-632. Circumstances under which conditions justifying initial involuntary**
469 **commitment shall be considered to continue to exist.**

470 (1) After an individual is involuntarily committed to the custody of a local mental
471 health authority under Subsection **62A-15-631**(16), the conditions justifying commitment
472 under that subsection shall be considered to continue to exist, for purposes of continued
473 treatment under ~~[Subsection]~~ Section 62A-15-631~~[(17)]~~ or ~~[conditional release]~~ placement in a
474 less restrictive environment under Section **62A-15-637**, if the court finds that the patient is still
475 mentally ill, and that absent an order of involuntary commitment and without continued
476 treatment the patient will suffer severe and abnormal mental and emotional distress as
477 indicated by recent past history, and will experience deterioration in the patient's ability to
478 function in the least restrictive environment, thereby making the patient a substantial danger to
479 self or others.

480 (2) A patient whose treatment is continued or who is ~~[conditionally released under the~~
481 ~~terms of this section]~~ placed in a less restrictive environment under Section **62A-15-637**, shall
482 be maintained in the least restrictive environment available that can provide the patient with the
483 treatment that is adequate and appropriate.

484 Section 6. Section **62A-15-636** is amended to read:

485 **62A-15-636. Periodic review.**

486 Each local mental health authority or ~~[its]~~ the local mental health authority's designee
487 shall, as frequently as practicable, examine or cause to be examined every ~~[person who has~~
488 ~~been committed to it. Whenever the local mental health authority or its designee determines~~
489 ~~that the conditions justifying involuntary commitment no longer exist, it shall discharge the~~
490 ~~patient. If the patient has been committed through judicial proceedings, a report describing that~~
491 ~~determination shall be sent to the clerk of the court where the proceedings were held]~~
492 individual who is committed to the local mental health authority.

493 Section 7. Section **62A-15-637** is amended to read:

494 **62A-15-637. Placement of patient in a less restrictive environment -- Placement in**
495 **more restrictive environment -- Procedures.**

496 (1) A local mental health authority or a designee of a local mental health authority may
497 release an improved patient to a less restrictive [~~treatment~~] environment when:

498 (a) the authority specifies the [~~less-restrictive treatment~~] less restrictive environment;

499 and

500 (b) the patient agrees in writing to the less restrictive [~~treatment~~] environment.

501 [~~(2) Whenever a local mental health authority or a designee of a local mental health~~
502 ~~authority determines that the conditions justifying commitment no longer exist, the local~~
503 ~~mental health authority or the designee shall discharge the patient. If the patient has been~~
504 ~~committed through judicial proceedings, the local mental health authority or the designee shall~~
505 ~~prepare a report describing the determination and shall send the report to the clerk of the court~~
506 ~~where the proceedings were held.]~~

507 [(2)] (2) (a) A local mental health authority or a designee of a local mental health
508 authority is authorized to issue an order for the immediate placement of a current patient into a
509 more restrictive environment, if:

510 (i) the local mental health authority or a designee of a local mental health authority has
511 reason to believe that the patient's current environment is aggravating the patient's mental
512 illness; or

513 (ii) the patient has failed to comply with the specified treatment plan to which the
514 patient agreed in writing.

515 (b) An order for a more restrictive environment shall include the reasons for the order
516 and shall authorize any peace officer to take the patient into physical custody and transport the
517 patient to a facility designated by the local mental health authority. [~~Prior to~~] Before or upon
518 admission to the more restrictive environment, or upon imposition of additional or different
519 requirements as conditions for continued release from inpatient care, copies of the order shall
520 be personally delivered to the patient and sent to the person in whose care the patient is placed.
521 The order shall also be sent to the patient's counsel of record and to the court that entered the
522 original order of commitment. The order shall inform the patient of the right to a hearing, as
523 prescribed in this section, the right to appointed counsel, and the other procedures prescribed in

524 Subsection [62A-15-631](#)(14).

525 (c) If the patient was in a less restrictive environment for more than 30 days and is
526 aggrieved by the change to a more restrictive environment, the patient or the patient's
527 representative may request a hearing within 30 days ~~[of the change]~~ after the day on which the
528 change is made. Upon receiving the request, the court shall immediately appoint two
529 designated examiners and proceed pursuant to Section [62A-15-631](#), with the exception of
530 Subsection [62A-15-631](#)(16), unless, by the time set for the hearing, the patient is returned to
531 the less restrictive environment or the patient withdraws the request for a hearing, in writing.

532 (d) The court shall:

533 (i) make findings regarding whether the conditions described in Subsections (3)(a) and
534 (b) were met and whether the patient is in the least restrictive environment that is appropriate
535 for the patient's needs; and

536 (ii) designate, by order, the environment for the patient's care and the period for which
537 the patient shall be treated, which may not extend beyond expiration of the original order of
538 commitment.

539 (4) (a) ~~[Nothing contained in]~~ Subject to Subsection (4)(b), this section ~~[prevents]~~ does
540 not prevent a local mental health authority or ~~[its]~~ the local mental health authority's designee,
541 pursuant to Section ~~[[62A-15-636](#)]~~ [62A-15-637](#), ~~[from discharging a patient from commitment~~
542 ~~or]~~ from placing a patient in an environment that is less restrictive than that ordered by the
543 court.

544 (b) A forensic-track patient may be discharged in accordance with Subsection
545 [62A-15-631](#)(19).

546 Section 8. Section **62A-15-703** is amended to read:

547 **62A-15-703. Residential and inpatient settings -- Commitment proceeding --**
548 **Child in physical custody of local mental health authority.**

549 (1) A child may receive services from a local mental health authority in an inpatient or
550 residential setting only after a commitment proceeding, for the purpose of transferring physical
551 custody, has been conducted in accordance with the requirements of this section.

552 (2) That commitment proceeding shall be initiated by a petition for commitment, and
553 shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant
554 to the procedures and requirements of this section. If the findings described in Subsection (4)

555 exist, the proceeding shall result in the transfer of physical custody to the appropriate local
556 mental health authority, and the child may be placed in an inpatient or residential setting.

557 (3) The neutral and detached fact finder who conducts the inquiry:

558 (a) shall be a designated examiner, as defined in Section 62A-15-602; and

559 (b) may not profit, financially or otherwise, from the commitment or physical
560 placement of the child in that setting.

561 (4) Upon determination by a fact finder that the following circumstances clearly exist,
562 the fact finder may order that the child be committed to the physical custody of a local mental
563 health authority:

564 (a) the child has a mental illness, as defined in [Subsection] Section 62A-15-602~~(13)~~;

565 (b) the child demonstrates a reasonable fear of the risk of substantial danger to self or
566 others;

567 (c) the child will benefit from care and treatment by the local mental health authority;
568 and

569 (d) there is no appropriate less-restrictive alternative.

570 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be
571 conducted in as informal manner as possible and in a physical setting that is not likely to have a
572 harmful effect on the child.

573 (b) The child, the child's parent or legal guardian, the petitioner, and a representative of
574 the appropriate local mental health authority:

575 (i) shall receive informal notice of the date and time of the proceeding; and

576 (ii) may appear and address the petition for commitment.

577 (c) The neutral and detached fact finder may, in the fact finder's discretion, receive the
578 testimony of any other person.

579 (d) The fact finder may allow a child to waive the child's right to be present at the
580 commitment proceeding, for good cause shown. If that right is waived, the purpose of the
581 waiver shall be made a matter of record at the proceeding.

582 (e) At the time of the commitment proceeding, the appropriate local mental health
583 authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the
584 commitment proceeding, shall provide the neutral and detached fact finder with the following
585 information, as it relates to the period of current admission:

- 586 (i) the petition for commitment;
- 587 (ii) the admission notes;
- 588 (iii) the child's diagnosis;
- 589 (iv) physicians' orders;
- 590 (v) progress notes;
- 591 (vi) nursing notes; and
- 592 (vii) medication records.

593 (f) The information described in Subsection (5)(e) shall also be provided to the child's
594 parent or legal guardian upon written request.

595 (g) (i) The neutral and detached fact finder's decision of commitment shall state the
596 duration of the commitment. Any commitment to the physical custody of a local mental health
597 authority may not exceed 180 days. Prior to expiration of the commitment, and if further
598 commitment is sought, a hearing shall be conducted in the same manner as the initial
599 commitment proceeding, in accordance with the requirements of this section.

600 (ii) At the conclusion of the hearing and subsequently in writing, when a decision for
601 commitment is made, the neutral and detached fact finder shall inform the child and the child's
602 parent or legal guardian of that decision and of the reasons for ordering commitment.

603 (iii) The neutral and detached fact finder shall state in writing the basis of the decision,
604 with specific reference to each of the criteria described in Subsection (4), as a matter of record.

605 (6) A child may be temporarily committed for a maximum of 72 hours, excluding
606 Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health
607 authority in accordance with the procedures described in Section [62A-15-629](#) and upon
608 satisfaction of the risk factors described in Subsection (4). A child who is temporarily
609 committed shall be released at the expiration of the 72 hours unless the procedures and findings
610 required by this section for the commitment of a child are satisfied.

611 (7) A local mental health authority shall have physical custody of each child committed
612 to it under this section. The parent or legal guardian of a child committed to the physical
613 custody of a local mental health authority under this section, retains legal custody of the child,
614 unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases
615 when the Division of Child and Family Services or the Division of Juvenile Justice Services
616 has legal custody of a child, that division shall retain legal custody for purposes of this part.

617 (8) The cost of caring for and maintaining a child in the physical custody of a local
618 mental health authority shall be assessed to and paid by the child's parents, according to their
619 ability to pay. For purposes of this section, the Division of Child and Family Services or the
620 Division of Juvenile Justice Services shall be financially responsible, in addition to the child's
621 parents, if the child is in the legal custody of either of those divisions at the time the child is
622 committed to the physical custody of a local mental health authority under this section, unless
623 Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services
624 shall assist those divisions in collecting the costs assessed pursuant to this section.

625 (9) Whenever application is made for commitment of a minor to a local mental health
626 authority under any provision of this section by a person other than the child's parent or
627 guardian, the local mental health authority or its designee shall notify the child's parent or
628 guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled
629 proceeding.

630 (10) (a) Each child committed pursuant to this section is entitled to an appeal within 30
631 days after any order for commitment. The appeal may be brought on the child's own petition or
632 on petition of the child's parent or legal guardian, to the juvenile court in the district where the
633 child resides or is currently physically located. With regard to a child in the custody of the
634 Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney
635 general's office shall handle the appeal, otherwise the appropriate county attorney's office is
636 responsible for appeals brought pursuant to this Subsection (10)(a).

637 (b) Upon receipt of the petition for appeal, the court shall appoint a designated
638 examiner previously unrelated to the case, to conduct an examination of the child in accordance
639 with the criteria described in Subsection (4), and file a written report with the court. The court
640 shall then conduct an appeal hearing to determine whether the findings described in Subsection
641 (4) exist by clear and convincing evidence.

642 (c) Prior to the time of the appeal hearing, the appropriate local mental health authority,
643 its designee, or the mental health professional who has been in charge of the child's care prior
644 to commitment, shall provide the court and the designated examiner for the appeal hearing with
645 the following information, as it relates to the period of current admission:

- 646 (i) the original petition for commitment;
- 647 (ii) admission notes;

- 648 (iii) diagnosis;
- 649 (iv) physicians' orders;
- 650 (v) progress notes;
- 651 (vi) nursing notes; and
- 652 (vii) medication records.

653 (d) Both the neutral and detached fact finder and the designated examiner appointed for
654 the appeal hearing shall be provided with an opportunity to review the most current
655 information described in Subsection (10)(c) prior to the appeal hearing.

656 (e) The child, the child's parent or legal guardian, the person who submitted the
657 original petition for commitment, and a representative of the appropriate local mental health
658 authority shall be notified by the court of the date and time of the appeal hearing. Those
659 persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the
660 court shall review the record and findings of the neutral and detached fact finder, the report of
661 the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion,
662 allow or require the testimony of the neutral and detached fact finder, the designated examiner,
663 the child, the child's parent or legal guardian, the person who brought the initial petition for
664 commitment, or any other person whose testimony the court deems relevant. The court may
665 allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that
666 waiver is granted, the purpose shall be made a part of the court's record.

667 (11) Each local mental health authority has an affirmative duty to conduct periodic
668 evaluations of the mental health and treatment progress of every child committed to its physical
669 custody under this section, and to release any child who has sufficiently improved so that the
670 criteria justifying commitment no longer exist.

671 (12) (a) A local mental health authority or its designee, in conjunction with the child's
672 current treating mental health professional may release an improved child to a less restrictive
673 environment, as they determine appropriate. Whenever the local mental health authority or its
674 designee, and the child's current treating mental health professional, determine that the
675 conditions justifying commitment no longer exist, the child shall be discharged and released to
676 the child's parent or legal guardian. With regard to a child who is in the physical custody of the
677 State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the
678 child's current treating mental health professional.

679 (b) A local mental health authority or its designee, in conjunction with the child's
680 current treating mental health professional, is authorized to issue a written order for the
681 immediate placement of a child not previously released from an order of commitment into a
682 more restrictive environment, if the local authority or its designee and the child's current
683 treating mental health professional has reason to believe that the less restrictive environment in
684 which the child has been placed is exacerbating the child's mental illness, or increasing the risk
685 of harm to self or others.

686 (c) The written order described in Subsection (12)(b) shall include the reasons for
687 placement in a more restrictive environment and shall authorize any peace officer to take the
688 child into physical custody and transport the child to a facility designated by the appropriate
689 local mental health authority in conjunction with the child's current treating mental health
690 professional. Prior to admission to the more restrictive environment, copies of the order shall
691 be personally delivered to the child, the child's parent or legal guardian, the administrator of the
692 more restrictive environment, or the administrator's designee, and the child's former treatment
693 provider or facility.

694 (d) If the child has been in a less restrictive environment for more than 30 days and is
695 aggrieved by the change to a more restrictive environment, the child or the child's
696 representative may request a review within 30 days of the change, by a neutral and detached
697 fact finder as described in Subsection (3). The fact finder shall determine whether:

698 (i) the less restrictive environment in which the child has been placed is exacerbating
699 the child's mental illness or increasing the risk of harm to self or others; or

700 (ii) the less restrictive environment in which the child has been placed is not
701 exacerbating the child's mental illness or increasing the risk of harm to self or others, in which
702 case the fact finder shall designate that the child remain in the less restrictive environment.

703 (e) Nothing in this section prevents a local mental health authority or its designee, in
704 conjunction with the child's current mental health professional, from discharging a child from
705 commitment or from placing a child in an environment that is less restrictive than that
706 designated by the neutral and detached fact finder.

707 (13) Each local mental health authority or its designee, in conjunction with the child's
708 current treating mental health professional shall discharge any child who, in the opinion of that
709 local authority, or its designee, and the child's current treating mental health professional, no

710 longer meets the criteria specified in Subsection (4), except as provided by Section [78A-6-120](#).
 711 The local authority and the mental health professional shall assure that any further supportive
 712 services required to meet the child's needs upon release will be provided.

713 (14) Even though a child has been committed to the physical custody of a local mental
 714 health authority under this section, the child is still entitled to additional due process
 715 proceedings, in accordance with Section [62A-15-704](#), before any treatment that may affect a
 716 constitutionally protected liberty or privacy interest is administered. Those treatments include,
 717 but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

718 Section 9. Section **77-15-2** is amended to read:

719 **77-15-2. Definitions.**

720 As used in this chapter:

721 (1) "Brain injury" means the same as that term is defined in Section [62A-5-101](#).

722 ~~[(1)]~~ (2) "Competency evaluation" means an evaluation conducted by a forensic
 723 evaluator to determine if an individual is competent to stand trial.

724 ~~[(2)]~~ (3) "Competent to stand trial" means that a defendant has:

725 (a) a rational and factual understanding of the criminal proceedings against the
 726 defendant and of the punishment specified for the offense charged; and

727 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
 728 rational understanding in order to assist in the defense.

729 ~~[(3)]~~ (4) "Department" means the Department of Human Services.

730 ~~[(4)]~~ (5) "Forensic evaluator" means a licensed mental health professional who [is]:

731 (a) is not involved in the defendant's treatment; [and]

732 (b) is trained and qualified [by the department] to conduct a competency evaluation, a
 733 restoration screening, and a progress toward competency evaluation[-] based on knowledge,
 734 experience, or education relating to:

735 (i) intellectual functioning, psychopathology, or other similar conditions; and

736 (ii) the legal system and the rights of a defendant in a criminal trial; and

737 (c) demonstrates ongoing education and training relating to forensic mental health in
 738 accordance with rules established by the department in accordance with Title 63G, Chapter 3,
 739 Utah Administrative Rulemaking Act.

740 ~~[(5)]~~ (6) "Incompetent to proceed" means that a defendant is not competent to stand

741 trial as a result of a mental illness, intellectual disability, brain injury, or a related condition.

742 (7) "Intellectual disability" means significant subaverage general intellectual
743 functioning existing concurrently with deficits in adaptive behavior that constitutes a
744 substantial limitation to the individual's ability to function in society.

745 (8) "Mental illness" means the same as that term is defined in Section [62A-15-602](#).

746 ~~[(6)]~~ (9) "Petition" means a petition to request a court to determine whether a defendant
747 is competent to stand trial.

748 ~~[(7)]~~ (10) "Progress toward competency evaluation" means an evaluation to determine
749 whether an individual who is receiving restoration treatment is:

750 (a) competent to stand trial;

751 (b) incompetent to proceed but has a substantial probability of becoming competent to
752 stand trial in the foreseeable future; or

753 (c) incompetent to proceed and does not have a substantial probability of becoming
754 competent to stand trial in the foreseeable future.

755 (11) (a) "Related condition" means a condition that:

756 (i) is found to be closely related to intellectual disability;

757 (ii) results in impairment of general intellectual functioning or adaptive behavior
758 similar to that of an intellectually disabled individual;

759 (iii) is likely to continue indefinitely; and

760 (iv) constitutes a substantial limitation to the individual's ability to function in society.

761 (b) "Related condition" does not include mental illness, psychiatric impairment, or
762 serious emotional or behavioral disturbance.

763 ~~[(8)]~~ (12) "Restoration screening" means an assessment of an individual determined to
764 be incompetent to stand trial for the purpose of determining the appropriate placement and
765 restoration treatment for the individual.

766 ~~[(9)]~~ (13) "Restoration treatment" means training and treatment that is:

767 (a) provided to an individual who is incompetent to proceed;

768 (b) tailored to the individual's particular impairment to competency; and

769 (c) limited to the purpose of restoring the individual to competency.

770 Section 10. Section **77-15-3.5** is amended to read:

771 **77-15-3.5. Incompetent to proceed in misdemeanor cases.**

772 (1) When a defendant charged with a misdemeanor is incompetent to proceed, a
773 petition [~~may~~] shall be filed in the district court of the county where the charge is pending [~~or~~
774 ~~where the defendant is confined~~].

775 (2) If the most severe charge against a defendant is a misdemeanor and the defendant is
776 adjudicated by a court as incompetent to proceed:

777 (a) the department shall provide restoration treatment to the defendant; and

778 (b) the court may refer the defendant to pretrial diversion services, upon agreement of
779 the prosecution and defense counsel.

780 (3) Unless the prosecutor or another individual indicates that civil commitment
781 proceedings will be initiated under Subsection ~~77-15-6(5)~~(7)(c), a court shall release a
782 defendant who is incompetent to proceed if:

783 (a) the most severe charge against the defendant is no more severe than a class B
784 misdemeanor;

785 (b) more than 60 days have passed after the day on which the court adjudicated the
786 defendant incompetent to proceed; and

787 (c) the defendant has not been restored to competency.

788 (4) A court may dismiss the charges against a defendant who was released under
789 Subsection (3).

790 Section 11. Section ~~77-15-4~~ is amended to read:

791 **77-15-4. Court may raise issue of competency at any time.**

792 (1) The court in which a charge is pending may raise the issue of a defendant's
793 competency at any time.

794 (2) If raised by the court, the court shall:

795 (a) permit counsel for each party to address the issue of competency[:]; and

796 (b) make a finding regarding whether there is reason to believe the defendant is
797 incompetent to proceed.

798 Section 12. Section ~~77-15-5~~ is amended to read:

799 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
800 **defendant -- Scope of examination and report.**

801 (1) A court in which criminal proceedings are pending shall stay all criminal
802 proceedings, if:

- 803 (a) a petition is filed under Section [77-15-3](#) or [77-15-3.5](#); or
- 804 (b) the court:
- 805 (i) raises the issue of the defendant's competency under Section [77-15-4](#)[-]; and
- 806 (ii) makes a finding regarding whether there is reason to believe the defendant is
- 807 incompetent to proceed under Section [77-15-4](#).
- 808 (2) The court in which the petition described in Subsection (1)(a) is filed:
- 809 (a) shall inform the court in which criminal proceedings are pending of the petition, if
- 810 the petition is not filed in the court in which criminal proceedings are pending;
- 811 (b) shall review the allegations of incompetency;
- 812 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
- 813 the petition, if the court finds the petition is not clearly sufficient on its face;
- 814 (d) shall hold a hearing, if the petition is opposed by either party; and
- 815 (e) may not order an examination of the defendant or order a hearing on the mental
- 816 condition of the defendant unless the court finds that the allegations in the petition raise a bona
- 817 fide doubt as to the defendant's competency to stand trial[~~;~~and].
- 818 (3) The parties' stipulation that the defendant is incompetent to proceed may not take
- 819 the place of a petition under this section.
- 820 ~~[(f)]~~ (4) (a) [if] If the court finds that the allegations raise a bona fide doubt as to the
- 821 defendant's competency to stand trial, shall order:
- 822 (i) the department to have the defendant evaluated by one forensic evaluator, if[~~:(A)]~~
- 823 the most severe charge against the defendant is a misdemeanor; or
- 824 ~~[(B) the defendant is charged with a felony but is not charged with a capital felony, and~~
- 825 ~~the court determines, based upon the allegations in the petition, that a second competency~~
- 826 ~~evaluation is not necessary;]~~
- 827 (ii) the department to have the defendant evaluated by two forensic evaluators, if:
- 828 (A) the defendant is charged with a capital felony; or
- 829 (B) the defendant is charged with a felony [~~but is not charged with~~] that is not a capital
- 830 felony, and the court determines, based upon the allegations in the petition, that good cause
- 831 exists to order a second competency evaluation [~~is necessary; and~~].
- 832 ~~[(iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a~~
- 833 ~~party, who shall:]~~

834 ~~[(A) select the additional forensic evaluator; and]~~

835 ~~[(B) pay for the costs of the additional forensic evaluator.]~~

836 (b) (i) This section does not prohibit a party from seeking an additional forensic
837 evaluator to conduct an evaluation of the defendant.

838 (ii) If a party seeks an additional evaluation under this Subsection (4)(b), the party
839 shall:

840 (A) select the additional forensic evaluator; and

841 (B) pay the costs of the additional forensic evaluator.

842 (c) The parties' stipulation that the defendant is incompetent to proceed may not take
843 the place of a competency evaluation ordered under this Subsection (4).

844 ~~[(3)]~~ (5) (a) If the petition or other information sufficiently raises concerns that the
845 defendant may have ~~[intellectual or developmental disabilities]~~ an intellectual disability, a
846 brain injury, or a related condition, at least one forensic evaluator who is experienced in
847 ~~[intellectual or developmental disability]~~ assessments of intellectual disabilities, brain injuries
848 or related conditions shall conduct a competency evaluation.

849 (b) The petitioner or other party, as directed by the court or requested by the
850 department, shall provide to the forensic evaluator nonmedical information and materials
851 relevant to a determination of the defendant's competency, including the charging document,
852 arrest or incident reports pertaining to the charged offense, and known criminal history
853 information~~[, and known prior mental health evaluations and treatments].~~

854 (c) For purposes of a competency evaluation, a court may order that custodians of
855 medical and mental health records pertaining to the defendant, including prior mental health
856 evaluations and records of a diagnosis of, or treatment for, a substance use disorder, provide
857 those records to a forensic evaluator without the ~~[need for]~~ consent of the defendant.

858 (d) Except as provided in Subsection (5)(e), the court shall order the forensic evaluator
859 to destroy all records provided under Subsection (5)(c) within 30 days after the later of the day
860 on which:

861 (i) the defendant is found guilty;

862 (ii) the defendant enters a guilty plea; or

863 (iii) the court sentences the defendant.

864 (e) The court may allow a forensic evaluator to possess the records described in

865 Subsection (5)(c) for more than 30 days after the later of the dates described in Subsection
866 (5)(d) subject to a protective order if:

867 (i) (A) the court finds the defendant is incompetent to proceed with a substantial
868 probability that the defendant will become competent in the foreseeable future;

869 (B) the court commits the individual to the department for restoration treatment; and

870 (C) the court orders the produced records be maintained and used by the department for
871 purposes of the defendant's restoration treatment only; or

872 (ii) (A) the court finds the defendant incompetent to proceed without a substantial
873 probability that the defendant will become competent in the foreseeable future;

874 (B) the prosecutor or another individual informs the court that the prosecutor or
875 individual will seek civil commitment of the defendant under Section 77-15-6; and

876 (C) the court orders the produced records will be maintained and used for purposes of
877 examining the defendant in connection with a petition for civil commitment only.

878 ~~[(d)]~~ (f) An order for a competency evaluation may not contain an order for any other
879 inquiry into the mental state of the defendant that is not described in Subsection (5)(c).

880 ~~[(4)]~~ (6) Pending a competency evaluation, unless the court or the department directs
881 otherwise, the defendant shall be retained in the same custody or status that the defendant was
882 in at the time the examination was ordered.

883 ~~[(5)]~~ (7) In the conduct of a competency evaluation, a progress toward competency
884 evaluation, and in a report to the court, a forensic evaluator shall consider and address, in
885 addition to any other factors determined to be relevant by the forensic evaluator:

886 (a) the defendant's present ability to:

887 (i) rationally and factually understand the criminal proceedings against the defendant;

888 (ii) consult with the defendant's legal counsel with a reasonable degree of rational
889 understanding in order to assist in the defense;

890 (iii) understand the charges or allegations against the defendant;

891 (iv) communicate facts, events, and states of mind;

892 (v) understand the range of possible penalties associated with the charges or allegations
893 against the defendant;

894 (vi) engage in reasoned choice of legal strategies and options;

895 (vii) understand the adversarial nature of the proceedings against the defendant;

- 896 (viii) manifest behavior sufficient to allow the court to proceed; and
897 (ix) testify relevantly, if applicable;
- 898 (b) the impact of the mental disorder or intellectual disability, if any, on the nature and
899 quality of the defendant's relationship with counsel;
- 900 (c) if psychoactive medication is currently being administered:
901 (i) whether the medication is necessary to maintain the defendant's competency; and
902 (ii) whether the medication may have an effect on the defendant's demeanor, affect, and
903 ability to participate in the proceedings; and
- 904 (d) whether the defendant is exhibiting false or exaggerated physical or psychological
905 symptoms relevant to the defendant's capacity to stand trial.
- 906 ~~[(7)]~~ (8) If the forensic evaluator's opinion is that the defendant is incompetent to
907 proceed, the forensic evaluator shall indicate in the report to the court:
- 908 (a) the factors that contribute to the defendant's incompetency, including the nature of
909 the defendant's mental disorder or intellectual or developmental disability, if any, and its
910 relationship to the factors contributing to the defendant's incompetency; and
- 911 (b) whether there is a substantial probability that restoration treatment ~~[may]~~ will, in
912 the foreseeable future, bring the defendant to competency to stand trial, or that the defendant
913 cannot become competent to stand trial in the foreseeable future.
- 914 ~~[(7)]~~ (9) (a) A forensic evaluator shall ~~provide~~ an initial report to the court and the
915 prosecuting and defense attorneys within 30 days ~~[of the receipt of the court's order]~~ after the
916 day on which the forensic evaluator receives the court's order. The report shall inform the
917 court of the examiner's opinion concerning the competency of the defendant to stand trial.
- 918 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in
919 Subsection ~~[(7)]~~ (9)(a), the forensic evaluator shall give written notice to the court.
- 920 (ii) A forensic evaluator who provides the notice described in Subsection ~~[(7)]~~ (9)(b)(i)
921 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day
922 on which the forensic evaluator received the court's order to conduct a competency evaluation
923 and file a report.
- 924 (iii) The court may further extend the deadline for completion of the evaluation and
925 report if the court determines that there is good cause for the extension.
- 926 (iv) Upon receipt of an extension described in Subsection ~~[(7)]~~ (9)(b)(iii), the forensic

927 evaluator shall file the report as soon as reasonably possible.

928 ~~[(8)]~~ (10) Any written report submitted by a forensic evaluator shall:

929 (a) identify the case ordered for evaluation by the case number;

930 (b) describe the procedures, techniques, and tests used in the examination and the
931 purpose or purposes for each;

932 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
933 issue referred for examination by the court, and indicate specifically those issues, if any, on
934 which the forensic evaluator could not give an opinion; and

935 (d) identify the sources of information used by the forensic evaluator and present the
936 basis for the forensic evaluator's clinical findings and opinions.

937 ~~[(9)]~~ (11) (a) Any statement made by the defendant in the course of any competency
938 examination, whether the examination is with or without the consent of the defendant, any
939 testimony by a forensic evaluator based upon the statement, and any other fruits of the
940 statement may not be admitted in evidence against the defendant in any criminal proceeding
941 except on an issue respecting mental condition on which the defendant has introduced
942 evidence. The evidence may be admitted, however, where relevant to a determination of the
943 defendant's competency.

944 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
945 defendant of the limits of confidentiality as provided under Subsection ~~[(9)]~~ (11)(a).

946 ~~[(10)]~~ (12) (a) Upon receipt of the forensic evaluators' reports, the court shall set a date
947 for a competency hearing. The hearing shall be held not less than ~~[5]~~ five and not more than 15
948 days after the day on which the court received the forensic evaluators' reports, unless for good
949 cause the court sets a later date.

950 (b) Any person directed by the department to conduct the competency evaluation may
951 be subpoenaed to testify at the hearing.

952 (c) The court may call any forensic evaluator to testify at the hearing who is not called
953 by the parties. If the court calls a forensic evaluator, counsel for the parties may cross-examine
954 the forensic evaluator.

955 (d) If the forensic evaluators are in conflict as to the competency of the defendant, all
956 forensic evaluators should be called to testify at the hearing if reasonably available. A conflict
957 in the opinions of the forensic evaluators does not require the appointment of an additional

958 forensic evaluator unless the court determines the appointment to be necessary.

959 ~~[(11)]~~ (13) (a) A defendant shall be presumed competent to stand trial unless the court,
960 by a preponderance of the evidence, finds the defendant incompetent to proceed. The burden
961 of proof is upon the proponent of incompetency at the hearing.

962 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
963 incompetency to give informed consent for medical treatment or for any other purpose, unless
964 specifically set forth in the court order.

965 ~~[(12)]~~ (14) In determining the defendant's competency to stand trial, the court shall
966 consider the totality of the circumstances, which may include the testimony of lay witnesses, in
967 addition to the forensic evaluator's report, testimony, and studies.

968 ~~[(13)]~~ (15) If the court finds the defendant incompetent to proceed:

969 (a) the court shall issue the order ~~[described in]~~ in accordance with Subsection
970 [77-15-6](#)(1), which shall:

971 (i) include findings addressing each of the factors in Subsection ~~[(5)]~~ (7)(a);

972 (ii) include a transportation order, if necessary;

973 (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological,
974 or social work reports submitted to the court relative to the mental condition of the defendant,
975 and any other documents made available to the court by either the defense or the prosecution,
976 pertaining to the defendant's current or past mental condition; and

977 (iv) be sent by the court to the department; and

978 (b) the prosecuting attorney shall provide to the department:

979 (i) the charging document and probable cause statement, if any;

980 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
981 charged offense; and

982 (iii) additional supporting documents.

983 ~~[(14)]~~ (16) The court may make any reasonable order to ensure compliance with this
984 section.

985 ~~[(15)]~~ (17) Failure to comply with this section does not result in the dismissal of
986 criminal charges.

987 Section 13. Section [77-15-6](#) is amended to read:

988 **[77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent](#)**

989 **hearings -- Notice to prosecuting attorneys.**

990 (1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant
991 to be incompetent to proceed, the court shall [~~order the defendant committed to the department~~
992 ~~for restoration treatment.~~] determine, by a preponderance of the evidence, whether the
993 defendant is:

994 (i) incompetent to proceed, with a substantial probability that the defendant will
995 become competent in the foreseeable future; or

996 (ii) incompetent to proceed, without a substantial probability that the defendant will
997 become competent in the foreseeable future.

998 (b) (i) If the court finds a defendant is incompetent to proceed under Subsection
999 (1)(a)(i), the court shall order the defendant be committed to the department for restoration
1000 treatment.

1001 (ii) If the court finds a defendant is incompetent to proceed under Subsection (1)(a)(ii),
1002 the court shall proceed under Subsection [77-15-6\(7\)](#).

1003 [~~(b)~~] (c) The court may recommend but may not order placement of the defendant. The
1004 court may, however, order that the defendant be placed in a secure setting rather than a
1005 nonsecure setting. Following restoration screening, the department's designee shall designate
1006 and inform the court of the specific placement and restoration treatment program for the
1007 defendant.

1008 [~~(c)~~] (d) Restoration treatment shall be of sufficient scope and duration to:

1009 (i) restore the individual to competency; or

1010 (ii) determine whether the individual can be restored to competency in the foreseeable
1011 future.

1012 [~~(d)~~] (e) A defendant whom a court determines is incompetent to proceed may not be
1013 held for restoration treatment longer than:

1014 (i) the time reasonably necessary to determine whether there is a substantial probability
1015 that the defendant will become competent to stand trial in the foreseeable future, or that the
1016 defendant cannot become competent to stand trial in the foreseeable future; and

1017 (ii) the maximum period of incarceration that the defendant could receive if the
1018 defendant were convicted of the most severe offense of the offenses charged.

1019 (2) (a) A defendant who is receiving restoration treatment shall receive a progress

1020 toward competency evaluation, by:

1021 (i) a forensic evaluator, designated by the department; and

1022 (ii) an additional forensic evaluator, if requested by a party and paid for by the
1023 requesting party.

1024 (b) A forensic evaluator shall complete a progress toward competency evaluation and
1025 submit a report within 90 days after the day on which the forensic evaluator receives the
1026 commitment order from the department. If the forensic evaluator is unable to complete the
1027 report within 90 days, the forensic evaluator shall provide to the court and counsel a summary
1028 progress statement that informs the court that additional time is necessary to complete the
1029 report, in which case the examiner shall have up to an additional 45 days to provide the full
1030 report.

1031 (c) The report shall:

1032 [~~(i) assess whether the defendant is exhibiting false or exaggerated physical or~~
1033 ~~psychological symptoms;]~~

1034 [~~(ii)~~] (i) describe any diagnostic instruments, methods, and observations used by the
1035 [~~examiner~~] evaluator to make the determination;

1036 (ii) describe the defendant's current mental illness, intellectual disability, brain injury,
1037 or related condition, if any;

1038 [~~(iii) state the forensic evaluator's opinion as to the effect of any false or exaggerated~~
1039 ~~symptoms on the defendant's competency to stand trial;]~~

1040 [~~(iv) assess the facility's or program's capacity to provide appropriate restoration~~
1041 ~~treatment for the defendant;]~~

1042 [~~(v) assess the nature of restoration treatment provided to the defendant;]~~

1043 [~~(vi)~~] (iii) assess what progress the defendant has made toward competency restoration,
1044 with respect to the factors identified by the court in [~~its~~] the court's initial order;

1045 [~~(vii) describe the defendant's current level of intellectual or developmental disability~~
1046 ~~and need for treatment, if any, and]~~

1047 (iv) assess whether the defendant can reasonably be restored to competency in the
1048 foreseeable future given the current restoration treatment being provided and the facility or
1049 program's capacity to provide appropriate restoration treatment for the defendant;

1050 [~~(viii)~~] (v) assess [~~the likelihood of restoration to competency;~~] the amount of time

1051 estimated to achieve competency, or the amount of time estimated to determine whether
1052 restoration to competency may be achieved[-]; and

1053 (vi) assess whether the defendant is exhibiting false or exaggerated physical or
1054 psychological symptoms and, if so, state the evaluator's opinion on the affect of any false or
1055 exaggerated symptoms on the defendant's competency to stand trial.

1056 (3) The court on [~~its~~] the court's own motion or upon motion by either party or the
1057 department may appoint an additional forensic evaluator to conduct a progress toward
1058 competency evaluation. If the court appoints an additional forensic evaluator upon motion of a
1059 party, that party shall pay the costs of the additional forensic evaluator.

1060 (4) (a) Within 15 days after the day on which the court receives the forensic evaluator's
1061 report of the progress toward competency evaluation, the court shall hold a hearing to review
1062 the defendant's competency.

1063 (b) At the hearing described in Subsection (4)(a), the burden of proving that the
1064 defendant is [~~competent~~] incompetent to stand trial is on the proponent of [~~competency~~]
1065 incompetency.

1066 (c) Following the hearing described in Subsection (4)(a), the court shall determine by a
1067 preponderance of evidence whether the defendant is:

1068 [~~(a)~~] (i) competent to stand trial;

1069 [~~(b)~~] (ii) incompetent to proceed, with a substantial probability that the defendant
1070 [~~may~~] will become competent in the foreseeable future; or

1071 [~~(c)~~] (iii) incompetent to proceed, without a substantial probability that the defendant
1072 [~~may~~] will become competent in the foreseeable future.

1073 (5) (a) If, at any time, the court determines that the defendant is competent to stand
1074 trial, the court shall:

1075 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
1076 charges; and

1077 (ii) order that the defendant be returned to the placement and status that the defendant
1078 was in at the time when the petition for the adjudication of competency was filed, unless the
1079 court determines that a [~~different~~] placement of the defendant in a less restrictive environment
1080 is more appropriate.

1081 (b) If the court determines that the defendant is not competent to proceed but that there

1082 is a substantial probability that the defendant [~~may~~] will become competent in the foreseeable
1083 future, the court may order that the defendant remain committed to the department or the
1084 department's designee for the purpose of restoration treatment.

1085 (c) If the court determines that the defendant is incompetent to proceed and that there is
1086 not a substantial probability that the defendant [~~may~~] will become competent in the foreseeable
1087 future, the court shall order the defendant released from commitment to the department, unless
1088 the prosecutor or another individual informs the court that commitment proceedings pursuant
1089 to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15,
1090 Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings
1091 must be initiated by a petition filed within seven days after the day on which the court makes
1092 the determination described in Subsection (4)(c), unless the court finds that there is good cause
1093 to delay the initiation of the civil commitment proceedings. The court may order the defendant
1094 to remain in the commitment of the department until the civil commitment proceedings
1095 conclude. If the defendant is civilly committed, the department shall notify the [~~court that~~
1096 ~~adjudicated the defendant incompetent to proceed~~] following persons at least [~~10~~] 60 days
1097 before any [~~release~~] proposed discharge of the committed individual[~~:~~] in accordance with
1098 Subsection 62A-15-631(19):

1099 (i) the court that adjudicated the defendant incompetent to proceed;

1100 (ii) the court that ordered the defendant civilly committed; and

1101 (iii) all counsel of record.

1102 (6) If a court, under Subsection (5)(b), extends a defendant's commitment, the court
1103 shall schedule a competency review hearing for the earlier of:

1104 (a) the department's best estimate of when the defendant may be restored to
1105 competency; or

1106 (b) three months after the day on which the court determined under Subsection (5)(b)
1107 to extend the defendant's commitment.

1108 (7) If a defendant is not competent to proceed by the day of the competency review
1109 hearing that follows the extension of a defendant's commitment, a court shall:

1110 (a) except for a defendant charged with crimes listed in Subsection (8), order a
1111 defendant:

1112 (i) released; or

1113 (ii) temporarily detained pending civil commitment proceedings under the same terms
1114 as described in Subsection (5)(c); and

1115 (b) terminate the defendant's commitment [~~to the department~~] for restoration treatment.

1116 (8) If the defendant has been charged with aggravated murder, murder, attempted
1117 murder, manslaughter, or a first degree felony and the court determines that the defendant is
1118 making reasonable progress towards restoration of competency at the time of the hearing held
1119 pursuant to Subsection (6), the court may extend the commitment for a period not to exceed 9
1120 months for the purpose of restoration treatment, with a mandatory review hearing at the end of
1121 the 9-month period.

1122 (9) If at the 9-month review hearing described in Subsection (8), the court determines
1123 that the defendant is not competent to proceed, the court shall:

1124 (a) order the defendant, except for a defendant charged with aggravated murder or
1125 murder, to be:

1126 (i) released; or

1127 (ii) temporarily detained pending civil commitment proceedings under the same terms
1128 as provided in Subsection (5)(c); and

1129 (b) terminate the defendant's commitment to the department for restoration treatment.

1130 (10) If the defendant has been charged with aggravated murder or murder and the court
1131 determines that the defendant is making reasonable progress towards restoration of competency
1132 at the time of the 9-month review hearing described in Subsection (8), the court may extend the
1133 commitment for a period not to exceed 24 months for the purpose of restoration treatment.

1134 (11) If the court extends the defendant's commitment term under Subsection (10), the
1135 court shall hold a hearing no less frequently than at 12-month intervals following the extension
1136 for the purpose of determining the defendant's competency status.

1137 (12) If, at the end of the 24-month commitment period described in Subsection (10),
1138 the court determines that the defendant is not competent to proceed, the court shall:

1139 (a) order the defendant to be:

1140 (i) released; or

1141 (ii) temporarily detained pending civil commitment proceedings under the same terms
1142 as provided in Subsection (5)(c); and

1143 (b) terminate the defendant's commitment [~~to the department~~] for restoration treatment.

1144 (13) Neither release from a pretrial incompetency commitment under the provisions of
1145 this section nor civil commitment requires dismissal of criminal charges. The court may retain
1146 jurisdiction over the criminal case and may order periodic reviews.

1147 (14) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services
1148 for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health
1149 Act, may still be adjudicated competent to stand trial under this chapter.

1150 (15) (a) The remedy for a violation of the time periods specified in this section, other
1151 than those specified in Subsection (5)(c), (7), (9), or (12), shall be a motion to compel the
1152 hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

1153 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),
1154 (9), or (12), or is not dismissal of the criminal charges.

1155 (16) In cases in which the treatment of the defendant is precluded by court order for a
1156 period of time, that time period may not be considered in computing time limitations under this
1157 section.

1158 (17) (a) At any time that the defendant becomes competent to stand trial, the clinical
1159 director of the hospital, the department, or the department's designee shall certify that fact to
1160 the court.

1161 (b) The court shall conduct a competency review hearing:

1162 (i) within 15 working days after the day on which the court receives the certification
1163 described in Subsection (17)(a); or

1164 (ii) within 30 working days after the day on which the court receives the certification
1165 described in Subsection (17)(a), if the court determines that more than 15 days are necessary
1166 for good cause related to the defendant's competency.

1167 (18) The court may order a hearing or rehearing at any time on ~~[its]~~ the court's own
1168 motion or upon recommendations of the clinical director of the hospital or other facility or the
1169 department.

1170 (19) Notice of a hearing on competency to stand trial shall be given to the prosecuting
1171 attorney. If the hearing is held in the county where the defendant is confined, notice shall also
1172 be given to the prosecuting attorney for that county.

1173 Section 14. Section **77-16a-302** is amended to read:

1174 **77-16a-302. Individuals found not guilty by reason of insanity -- Disposition --**

1175 **Discharge.**

1176 (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing
1177 within 10 days to determine whether the defendant currently has a mental illness. The defense
1178 counsel and prosecutors may request further evaluations and present testimony from those
1179 examiners.

1180 (2) After the hearing and upon consideration of the record, the court shall order the
1181 defendant committed to the department if [it] the court finds by clear and convincing evidence
1182 that:

1183 (a) the defendant has a mental illness; and

1184 (b) because of that mental illness the defendant presents a substantial danger to self or
1185 others.

1186 (3) The period of commitment described in Subsection (2) may not exceed the period
1187 for which the defendant could be incarcerated had the defendant been convicted and received
1188 the maximum sentence for the crime of which the defendant was accused. [~~At the time that~~
1189 ~~period expires, involuntary civil commitment proceedings may be instituted in accordance with~~
1190 ~~Title 62A, Chapter 15, Substance Abuse and Mental Health Act.~~]

1191 (4) (a) The department shall notify the court that adjudicated the defendant not guilty
1192 by reason of insanity and all counsel of record at least 60 days before the day on which a
1193 defendant committed to the department under Subsection (2) will be discharged.

1194 (b) The prosecutor or any other individual shall inform the court within 30 days after
1195 the day on which the prosecutor or other individual receives notice from the department under
1196 Subsection (4)(a) that commitment proceedings in accordance with Title 62A, Chapter 5,
1197 Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental
1198 Health Act, will be initiated.

1199 (c) An individual shall initiate civil commitment proceedings within the 60 day period
1200 described in Subsection (4)(a), unless the court finds that there is good cause to delay the
1201 initiation of the civil commitment proceedings.

1202 (d) The court may order that the defendant remain in the custody of the department
1203 until the civil commitment proceedings described in Subsection (4)(b) conclude.