

# HB0385S01 compared with HB0385

~~text~~ shows text that was in HB0385 but was deleted in HB0385S01.

text shows text that was not in HB0385 but was inserted into HB0385S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Nelson T. Abbott proposes the following substitute bill:

## MENTALLY ILL OFFENDERS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Nelson T. Abbott**

Senate Sponsor: \_\_\_\_\_

---

### LONG TITLE

#### General Description:

This bill concerns ~~a plea of guilty~~ offenders with a mental ~~illness~~ condition.

#### Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ modifies when certain defendants are eligible for a criminal defense based on a mental condition;
- ▶ modifies when certain defendants may receive probation, supervised release, or a reduction to a lower category of offense under specified circumstances;
- ▶ changes "guilty with a mental illness" to "guilty with a mental condition";
- ▶ amends eligibility, procedures, and requirements concerning a plea of guilty with a mental ~~illness; and~~

## HB0385S01 compared with HB0385

### condition:

- ▶ amends certain provisions concerning the sentencing and commitment of an offender with a mental condition; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides revisor instructions.

### Utah Code Sections Affected:

#### AMENDS:

53-10-208.1, as last amended by Laws of Utah 2021, Chapter 159

53-10-403.5, as last amended by Laws of Utah 2020, Chapter 415

62A-15-610, as last amended by Laws of Utah 2011, Chapter 366

62A-15-623, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
Chapter 8

62A-15-902, as last amended by Laws of Utah 2011, Chapter 366

76-2-305, as last amended by Laws of Utah 2016, Chapter 115

76-3-201, as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last  
amended by Coordination Clause, Laws of Utah 2021, Chapter 261

76-3-406, as last amended by Laws of Utah 2022, Chapter 181

76-5-205.5, as last amended by Laws of Utah 2022, Chapter 181

76-5-303.5, as last amended by Laws of Utah 2022, Chapter 181

76-10-1311, as last amended by Laws of Utah 2008, Chapter 382

77-13-1, as last amended by Laws of Utah 2011, Chapter 366

77-16a-101, as last amended by Laws of Utah 2011, Chapter 366

77-16a-102, as last amended by Laws of Utah 2019, Chapter 312

77-16a-104, as last amended by Laws of Utah 2011, Chapter 366

77-16a-201, as last amended by Laws of Utah 2018, Chapter 334

77-16a-202, as last amended by Laws of Utah 2011, Chapter 366

77-16a-203, as last amended by Laws of Utah 2011, Chapter 366

77-16a-204, as last amended by Laws of Utah 2011, Chapter 366

## HB0385S01 compared with HB0385

77-16a-205, as last amended by Laws of Utah 2018, Chapter 334

77-16a-301, as last amended by Laws of Utah 2019, Chapter 312

77-16a-302, as last amended by Laws of Utah 2011, Chapter 366

77-16a-304, as last amended by Laws of Utah 2011, Chapter 366

77-16a-305, as last amended by Laws of Utah 1993, Chapter 285

77-16a-306, as last amended by Laws of Utah 2011, Chapter 366

77-27-2, as last amended by Laws of Utah 2021, Chapter 260

77-27-5.3, as last amended by Laws of Utah 2011, Chapter 366

77-27-10.5, as last amended by Laws of Utah 2011, Chapter 366

77-36-1.1, as last amended by Laws of Utah 2021, Chapter 213

77-38-302, as last amended by Laws of Utah 2020, Chapter 230

77-38b-102, as last amended by Laws of Utah 2022, Chapter 359

78A-2-302, as last amended by Laws of Utah 2022, Chapter 272

78B-7-901, as enacted by Laws of Utah 2020, Chapter 142

80-2-1004, as renumbered and amended by Laws of Utah 2022, Chapter 334

### REPEALS AND REENACTS:

77-16a-103, as last amended by Laws of Utah 2011, Chapter 366

---

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

Section 1. Section 53-10-208.1 is amended to read:

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

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

(a) all dispositions of criminal matters, including:

(i) guilty pleas;

(ii) convictions;

(iii) dismissals;

(iv) acquittals;

(v) pleas held in abeyance;

(vi) judgments of not guilty by reason of insanity;

## HB0385S01 compared with HB0385

- (vii) judgments of guilty with a mental ~~[illness]~~ condition;
- (viii) finding of mental incompetence to stand trial; and
- (ix) probations granted;
- (b) orders of civil commitment under the terms of Section 62A-15-631;
- (c) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and
- (d) protective orders issued after notice and hearing, pursuant to:
  - (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
  - (ii) Title 78B, Chapter 7, Part 4, Dating Violence Protective Orders;
  - (iii) Title 78B, Chapter 7, Part 5, Sexual Violence Protective Orders;
  - (iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders; or
  - (v) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.
- (2) The court in the county where a determination or finding was made shall transmit a record of the determination or finding to the bureau no later than 48 hours after the determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:
  - (a) adjudicated as a mental defective; or
  - (b) involuntarily committed to a mental institution in accordance with Subsection 62A-15-631(16).
- (3) The record described in Subsection (2) shall include:
  - (a) an agency record identifier;
  - (b) the individual's name, sex, race, and date of birth; and
  - (c) the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

### Section 2. Section 53-10-403.5 is amended to read:

#### **53-10-403.5. Definitions.**

As used in Sections 53-10-403, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406:

- (1) "Bureau" means the Bureau of Forensic Services.
- (2) "Combined DNA Index System" or "CODIS" means the program operated by the Federal Bureau of Investigation to support criminal justice DNA databases and the software

## HB0385S01 compared with HB0385

used to run the databases.

(3) "Conviction" means:

(a) a verdict or conviction;

(b) a plea of guilty or guilty ~~[and mentally ill]~~ with a mental condition;

(c) a plea of no contest; or

(d) the acceptance by the court of a plea in abeyance.

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA specimen" or "specimen" means a biological sample of a person's saliva or blood, a biological sample from a crime scene, or a sample collected as part of an investigation.

(6) "Final judgment" means a judgment, including any supporting opinion, concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(7) "Rapid DNA" means the fully automated process of developing a DNA profile.

(8) "Violent felony" means any offense under Section 76-3-203.5.

Section 3. Section 62A-15-610 is amended to read:

**62A-15-610. Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.**

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

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

(a) persons 18 years ~~[of age]~~ old and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;

(b) persons under 18 years ~~[of age]~~ old who meet the criteria necessary for commitment under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, and for whom no less restrictive alternative is available;

(c) persons adjudicated and found to be guilty with a mental ~~[illness]~~ condition under ~~[Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness]~~ Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;

(d) persons adjudicated and found to be not guilty by reason of insanity who are under

## HB0385S01 compared with HB0385

a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section 77-16a-302;

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

(f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and

(g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

### Section 4. Section 62A-15-623 is amended to read:

#### **62A-15-623. Criminal's escape -- Penalty.**

Any person committed to the state hospital under the provisions of Title 77, Chapter 15, Inquiry into Sanity of Defendant, or ~~[Chapter 16a, Commitment and Treatment of Persons with a Mental Illness]~~ Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

### Section 5. Section 62A-15-902 is amended to read:

#### **62A-15-902. Design and operation -- Security.**

(1) The forensic mental health facility is a secure treatment facility.

(2) (a) The forensic mental health facility accommodates the following populations:

(i) prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty with a mental ~~[illness]~~ condition or guilty with a mental ~~[illness]~~ condition at the time of the offense undergoing evaluation for ~~a~~ mental ~~[illness]~~ condition under ~~[Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness]~~ Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental ~~[illness]~~ condition or guilty with a mental ~~[illness]~~ condition at the time of the offense under ~~[Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness]~~ Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who also have an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be

## HB0385S01 compared with HB0385

incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate individuals to perform security functions for the state hospital.

Section 6. Section 76-2-305 is amended to read:

**76-2-305. Mental ~~illness~~ condition -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed** ~~-- Definition.~~

~~(1)~~;

(1) As used in this section:

(a) (i) "Mental condition" means a mental illness or mental disability that substantially impairs an individual's mental, emotional, or behavioral functioning.

(ii) "Mental condition" does not include a mental abnormality that is manifested solely by repeated criminal conduct, anti-social behavior, or a substance use disorder.

(b) "Mental disability" means an intellectual disability, neurodevelopmental disorder,

## HB0385S01 compared with HB0385

or neurocognitive disorder as those terms are defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(c) "Mental illness" means the following mental disorders as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:

(i) schizophrenia spectrum and other psychotic disorders; or

(ii) other serious mental health conditions with psychotic features.

~~[(1)]~~ (2) (a) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of a mental [illness] condition, lacked the mental state required as an element of the offense charged.

(b) ~~[Mental illness]~~ A mental condition is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.

~~[(2)]~~ (3) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."

~~[(3)]~~ (4) A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of a mental [illness] condition if the alcohol or substance caused, triggered, or substantially contributed to the mental [illness] condition.

~~[(4)]~~ As used in this section:

~~[(a)]~~ "Intellectual disability" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

~~[(b)]~~ (i) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, intellectual disability.

~~[(ii)]~~ "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct.



## HB0385S01 compared with HB0385

### Section 7. Section 76-3-201 is amended to read:

#### **76-3-201. Sentences or combination of sentences allowed -- Restitution and other costs -- Civil penalties.**

(1) As used in this section:

(a) (i) "Convicted" means:

(A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a mental [illness] condition; or

(B) having received a judgment of guilty or a judgment of guilty with a mental [illness] condition.

(ii) "Convicted" does not include an adjudication of an offense under Section 80-6-701.

(b) "Restitution" means the same as that term is defined in Section 77-38b-102.

(2) Within the limits provided by this chapter, a court may sentence an individual convicted of an offense to any one of the following sentences, or combination of the following sentences:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) except as otherwise provided by law, to probation in accordance with Section 77-18-105;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law:

(i) to forfeit property;

(ii) to dissolve a corporation;

(iii) to suspend or cancel a license;

(iv) to permit removal of an individual from office;

(v) to cite for contempt; or

(vi) to impose any other civil penalty.

(b) A court may include a civil penalty in a sentence.

(4) In addition to any other sentence that a sentencing court may impose, the court shall order an individual to:

## **HB0385S01 compared with HB0385**

(a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act;

(b) subject to Subsection (5) and Section 77-32b-104, pay the cost of any government transportation if the individual was:

(i) transported, in accordance with a court order, from one county to another county within the state;

(ii) charged with a felony or a misdemeanor; and

(iii) convicted of an offense;

(c) subject to Section 77-32b-104, pay the cost expended by an appropriate governmental entity under Section 77-30-24 for the extradition of the individual if the individual:

(i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve pending criminal charges; and

(ii) is convicted of an offense in the county for which the individual is returned;

(d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost of medical care, treatment, hospitalization, and related transportation, as described in Section 17-50-319, that is provided by a county to the individual while the individual is in a county correctional facility before and after sentencing if:

(i) the individual is convicted of an offense that results in incarceration in the county correctional facility; and

(ii) (A) the individual is not a state prisoner housed in the county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104 if the individual is a state probationary inmate or a state parole inmate; and

(e) pay any other cost that the court determines is appropriate under Section 77-32b-104.

(5) (a) The court may not order an individual to pay the costs of government transportation under Subsection (4)(b) if:

(i) the individual is charged with an infraction or a warrant is issued for an infraction on a subsequent failure to appear; or

(ii) the individual was not transported in accordance with a court order.

## HB0385S01 compared with HB0385

(b) (i) The cost of governmental transportation under Subsection (4)(b) shall be calculated according to the following schedule:

- (A) \$100 for up to 100 miles that an individual is transported;
- (B) \$200 for 100 miles to 200 miles that an individual is transported; and
- (C) \$350 for 200 miles or more that an individual is transported.

(ii) The schedule under Subsection (5)(b)(i) applies to each individual transported regardless of the number of individuals transported in a single trip.

(6) The cost of medical care under Subsection (4)(d) does not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

Section ~~41~~8. Section **76-3-406** is amended to read:

**76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.**

(1) Notwithstanding Sections 76-3-201 and 77-18-105 and ~~[Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness]~~ Title 77, Chapter 16a, [Commitment and Treatment of Individuals with a Mental Condition](#), except as provided in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

- (a) Section 76-5-202, aggravated murder;
- (b) Section 76-5-203, murder;
- (c) Section 76-5-301.1, child kidnaping;
- (d) Section 76-5-302, aggravated kidnaping;
- (e) Section 76-5-402, rape, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
- (f) Section 76-5-402.1, rape of a child;
- (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection

## HB0385S01 compared with HB0385

76-5-402.2(3)(b), (3)(c), or (4);

(h) Section 76-5-402.3, object rape of a child;

(i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);

(j) Section 76-5-403.1, sodomy on a child;

(k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under Subsection 76-5-404(3)(b)(i) or (ii);

(l) Section 76-5-404.3, aggravated sexual abuse of a child;

(m) Section 76-5-405, aggravated sexual assault; or

(n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

(2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the defendant:

(a) was under 18 years old at the time of the offense; and

(b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Section 9. Section 76-5-205.5 is amended to read:

**76-5-205.5. Special mitigation for mental ~~illness~~ condition or provocation --**

**Burden of proof -- Charge reduction.**

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

(i) (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock, or grief that:

(I) causes the defendant to be incapable of reflection and restraint; and

(II) would cause an objectively reasonable person to be incapable of reflection and restraint.

(B) "Extreme emotional distress" does not include:

(I) a condition resulting from ~~mental illness~~ a mental condition; or

(II) distress that is substantially caused by the defendant's own conduct.

(ii) "Mental ~~illness~~ condition" means the same as that term is defined in Section 76-2-305.

(b) The terms defined in Section 76-1-101.5 apply to this section.

## HB0385S01 compared with HB0385

(2) Special mitigation exists when a defendant causes the death of another individual or attempts to cause the death of another individual:

(a) (i) under circumstances that are not legally justified, but the defendant acts under a delusion attributable to a mental [illness] condition;

(ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and

(iii) the defendant's actions, in light of the delusion, are reasonable from the objective viewpoint of a reasonable person; or

(b) except as provided in Subsection (4), under the influence of extreme emotional distress that is predominantly caused by the victim's highly provoking act immediately preceding the defendant's actions.

(3) A defendant who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (2)(a) on the basis of a mental [illness] condition if the alcohol or substance causes, triggers, or substantially contributes to the defendant's mental [illness] condition.

(4) A defendant may not claim special mitigation under Subsection (2)(b) if:

(a) the time period after the victim's highly provoking act and before the defendant's actions was long enough for an objectively reasonable person to have recovered from the extreme emotional distress;

(b) the defendant responded to the victim's highly provoking act by inflicting serious or substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the victim, regardless of whether the victim was conscious during the infliction of serious or substantial bodily injury or torture; or

(c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of words alone.

(5) If the trier of fact finds that the elements of aggravated murder, attempted aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and also finds that the existence of special mitigation under this section is established by a preponderance of the evidence, the court shall enter a judgment of conviction in accordance

## HB0385S01 compared with HB0385

with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii), respectively.

(6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact shall return a special verdict at the same time as the general verdict, indicating whether it finds special mitigation.

(7) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to find special mitigation under this section.

(b) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a unanimous vote, the jury shall return a general verdict finding the defendant guilty of the charged crime and a special verdict indicating special mitigation.

(c) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that special mitigation is not established, or if the jury is unable to unanimously agree that special mitigation is established, the jury shall convict the defendant of the greater offense for which the prosecution proves all the elements beyond a reasonable doubt.

### Section 10. Section 76-5-303.5 is amended to read:

#### **76-5-303.5. Notification of conviction of custodial interference.**

(1) As used in this section:

(a) (i) "Convicted" means a conviction by plea or verdict or adjudication in juvenile court of a crime or offense.

(ii) "Convicted" includes:

(A) a plea of guilty or guilty ~~[and mentally ill]~~ with a mental condition;

(B) a plea of no contest; and

(C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) If an individual is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

## HB0385S01 compared with HB0385

- (a) a class B misdemeanor, under Subsection 76-5-303(3)(a);
- (b) a class A misdemeanor, under Subsection 76-5-303(3)(b); or
- (c) a felony, under Subsection 76-5-303(3)(c).

### Section 11. Section 76-10-1311 is amended to read:

#### **76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.**

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty ~~and mentally ill~~ with a mental condition, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

- (a) the HIV infection test results;
- (b) a copy of the written notice as provided in Section 76-10-1312;
- (c) photographic identification; and
- (d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law

## HB0385S01 compared with HB0385

enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63G-2-801.

(10) When the medical file is released as provided in Section 63G-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 12. Section 77-13-1 is amended to read:

### **77-13-1. Kinds of pleas.**

(1) There are five kinds of pleas to an indictment or information:

(a) not guilty;

(b) guilty;

(c) no contest;

(d) not guilty by reason of insanity; and

(e) guilty with a mental ~~illness~~ condition at the time of the offense.

(2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

Section ~~77-13~~ 13. Section **77-16a-101** is amended to read:

## **CHAPTER 16a. COMMITMENT AND TREATMENT OF INDIVIDUALS WITH A MENTAL CONDITION**

### **Part 1. Plea and Verdict of Guilty with a Mental Condition**

#### **77-16a-101. Definitions.**

As used in this chapter:



## HB0385S01 compared with HB0385

- (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.
- (2) "Department" means the Department of Health and Human Services.
- (3) "Executive director" means the executive director of the Department of Health and

Human Services.

~~(4) "Mental defect" means a congenital condition, the result of an injury, or a residual effect of a physical or mental illness.~~ Forensic evaluator" means a licensed mental health professional who is:

(a) not involved in the defendant's treatment; and

(b) trained and qualified by the department to conduct a guilty with a mental condition evaluation.

~~(5) "Mental {disease}" means the following mental disorders as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:~~

~~—— (a) schizophrenia;~~

~~—— (b) schizoaffective disorder;~~

~~—— (c) bipolar disorder;~~

~~—— (d) delusional disorder;~~

~~—— (e) psychotic disorder;~~

~~—— (f) obsessive compulsive disorder; or~~

~~—— (g) dissociative disorder.~~

~~[ (4) ] (6) condition" means the same as that term is defined in Section 76-2-305.~~

(6) "Mental disability" means the same as that term is defined in Section 76-2-305.

[ (4) ] (7) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

~~[ (5) ] (7) (a) (8) "Mental illness" [is as] means the same as that term is defined in Section 76-2-305 ~~{ } means a mental disease or mental defect that substantially impairs an individual's mental, emotional, or behavioral functioning.~~~~

~~—— (b) "Mental illness" does not include a mental abnormality that is manifested solely by repeated criminal conduct.~~

~~—— [(6)] (8) :~~

## HB0385S01 compared with HB0385

~~[(6)] (9)~~ "Offender with a mental [illness] condition" means an individual who has been adjudicated guilty with a mental [illness], including an individual who has an intellectual disability] condition.

~~[(7)]~~ ~~(9)~~ (10) "UDC" means the Department of Corrections.

Section 14. Section 77-16a-102 is amended to read:

### **77-16a-102. Jury instructions.**

(1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that the jury may find the defendant:

- (a) guilty;
- (b) guilty with a mental [illness] condition at the time of the offense;
- (c) guilty of a lesser offense;
- (d) guilty of a lesser offense with a mental [illness] condition at the time of the offense;
- (e) not guilty by reason of insanity; or
- (f) not guilty.

(2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(2)(a), or when the evidence raises the issue and either party requests the instruction, the court shall instruct the jury that if the jury finds a defendant guilty by proof beyond a reasonable doubt of a charged offense or lesser included offense, the jury shall also return a special verdict indicating whether the jury finds that the defendant had a mental [illness] condition at the time of the offense.

(b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental [illness] condition at the time of the offense, the jury shall return the general verdict of "guilty with a mental [illness] condition at the time of the offense."

(c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental [illness] condition at the time of the offense, the jury shall return the general verdict of "guilty of a lesser offense with a mental [illness] condition at the time of the offense."

(d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental [illness] condition at the time of the

## HB0385S01 compared with HB0385

offense, the jury shall return a verdict of "guilty" of the offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental ~~[illness]~~ condition at the time of the offense.

(e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for the jury's general verdict.

(3) (a) In determining whether a defendant should be found guilty with a mental ~~[illness]~~ condition at the time of the offense, the court shall instruct the jury that the standard of proof applicable to a finding of mental ~~[illness]~~ condition is by a preponderance of the evidence. ~~{ }~~

(b) The court shall also instruct the jury that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of an offense must be proven beyond a reasonable doubt.

(4) (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(2)(b), the jury shall, in addition to the jury's general verdict, return a special verdict.

(b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for the jury's general verdict.

Section ~~{3}~~ 15. Section **77-16a-103** is repealed and reenacted to read:

**77-16a-103. Plea of guilty with a mental ~~[illness]~~ condition -- Procedures -- Sentencing -- Reduction -- Costs.**

(1) (a) (i) If a defendant wishes to enter a plea of guilty with a mental ~~[illness]~~ condition, the parties may stipulate as to ~~{ whether }~~:

(A) ~~whether~~ the defendant had a mental ~~[illness]~~ condition at the time of the commission of the offense; ~~{ or }~~ and

(B) ~~whether~~ the defendant ~~{ currently has a mental illness }~~ could benefit from supervision or treatment.

(ii) If the parties stipulate as described in ~~{ Subsections }~~ Subsection (1)(a)(i) ~~{ (A) or (B) }~~, the court shall enter findings consistent with the parties' stipulation.

(b) If the parties do not stipulate to ~~{ Subsections }~~ Subsection (1)(a)(i) ~~{ (A) and (B) }~~, the court shall hold a hearing and determine, by clear and convincing evidence:

## HB0385S01 compared with HB0385

(i) whether the defendant had a mental ~~fitness~~condition at the time of the commission of the offense ~~{, unless stipulated by the parties}~~; and

(ii) whether the defendant ~~currently has a mental illness, unless stipulated by the parties~~could benefit from supervision or treatment.

(c) After reviewing the stipulation described in Subsection (1)(a)(i) or conducting a hearing under Subsection (1)(b):

(i) if the court finds that the defendant ~~was mentally ill~~had a mental condition at the time of the offense, the court ~~may~~shall accept the defendant's plea of guilty with a mental ~~fitness~~condition; or

(ii) if the court finds that the defendant ~~was~~did not ~~mentally ill~~have a mental condition at the time of the offense, the court may not accept the defendant's plea of guilty with a mental ~~fitness~~condition.

(2) (a) If a defendant wishes to enter a plea of guilty with a mental ~~fitness~~condition for a felony offense and the parties do not stipulate to ~~{Subsections} Subsection (1)(a)(i)(A) and (B)}~~, before holding the hearing described in Subsection (1)(b), the court may order the defendant to submit to an examination, which may be conducted only by a forensic evaluator appointed by the department, to determine:

(i) whether the defendant had a mental ~~fitness~~condition at the time of the commission of the offense;

(ii) whether the defendant ~~currently has a mental illness~~could benefit from supervision or treatment; or

(iii) whether the defendant currently is competent to enter a plea.

(b) (i) If a defendant wishes to enter a plea of guilty with a mental ~~fitness~~condition for a misdemeanor offense and the parties do not stipulate to ~~{Subsections} Subsection (1)(a)(i)(A) and (B)}~~, before holding the hearing described in Subsection (1)(b), the court may order the defendant to submit to an examination by ~~{~~:

~~—— (A) the department; or~~

~~—— (B) a person qualified as a designated examiner under Section 62A-15-602;~~

‡ a forensic evaluator.

(ii) Unless otherwise ordered by the court, the examination described in Subsection (2)(b)(i) shall determine:

## HB0385S01 compared with HB0385

(A) whether the defendant had a mental ~~illness~~condition at the time of the commission of the offense;

(B) whether the defendant ~~currently has a mental illness~~could benefit from supervision or treatment; or

(C) whether the defendant currently is competent to enter a plea.

(3) If a defendant relies on a private mental health evaluation in support of the defendant's plea of guilty with a mental ~~illness~~condition and the parties do not stipulate to ~~Subsections~~Subsection (1)(a)(i) ~~and (B)~~, upon the request of the prosecutor before the hearing described in Subsection (1)(b), the court shall order the defendant to submit to an examination by:

(a) the department if the offense is a felony; or

(b) the department or a ~~person qualified as a designated examiner under Section 62A-15-602~~forensic evaluator if the offense is a misdemeanor.

(4) If a court finds that a defendant was guilty with a mental ~~illness~~condition at the time of the offense in accordance with Subsection (1)(c)(i) but ~~does~~would not ~~currently have a mental illness~~benefit from supervision or treatment, the court shall hold a sentencing hearing within 45 days of the entry of the defendant's plea of guilty with a mental ~~illness~~condition.

(5) (a) If a court finds that a defendant had a mental ~~illness~~condition at the time of the commission of the offense, ~~currently has a mental illness~~the defendant could benefit from supervision or treatment, and has entered a plea of guilty with a mental ~~illness~~condition in accordance with Subsection (1)(c)(i), the court:

(i) shall schedule a treatment review hearing within 30 days after the day on which the court entered the plea of guilty with a mental ~~illness~~condition; and

(ii) may defer sentencing for up to one year in accordance with Subsection (6), if the defendant consents to a deferred sentence.

(b) At the treatment review hearing described in Subsection (5)(a)(i), the court shall:

(i) consider all diagnosis, treatment, and supervision recommendations; and

(ii) order the defendant to comply with all treatment and supervision recommendations that the court finds are in the best interest of the defendant and public safety.

(c) (i) In determining treatment and supervision recommendations under Subsection

## HB0385S01 compared with HB0385

(5)(b), the court may order the defendant to be placed in a secure setting as described in ~~{Subsection}~~Subsections (5)(c)(~~{ii}~~ii) and (iii) if the court finds that the placement would be in the best interest of the defendant, a victim of the defendant, or public safety.

(ii) (A) If the offense is a class C misdemeanor~~{ or an infraction}~~, the court may not place the defendant in a secure setting for more than ~~{30}~~90 days.

(B) If the offense is a class B misdemeanor, the court may not place the defendant in a secure setting for more than six months.

(C) If the offense is a class A misdemeanor or a felony, the court may place the defendant in a secure setting for up to one year.

~~(iii) The court shall, before making a determination as to a secure setting placement, notify the executive director of the proposed placement and provide the department with an opportunity to:~~

~~(A) evaluate the defendant; and~~

~~(B) make a recommendation regarding placement to the court.~~

(d) If the court determines that the defendant is eligible for supervised release as part of the defendant's treatment and supervision recommendations under Subsection (5)(b), except as provided in Section 76-3-406, the court may order:

(i) if the offense is a felony, supervision by:

~~(A) Adult Probation and Parole; or { a private supervisor who}~~

~~(B) a public or private entity that provides mental or behavioral health services and is approved by the department {to supervise a defendant who is guilty with a mental illness} or the court; or~~

(ii) if the offense is a misdemeanor, supervision by:

~~(A) a local mental health authority; or { a private supervisor who}~~

~~(B) a public or private entity that provides mental or behavioral health services and is approved by the department {to supervise a defendant who is guilty with a mental illness} or the court.~~

(e) (i) After the initial review hearing described in Subsection (5)(a), the court shall hold periodic review hearings approximately every 90 days, the frequency of which may be modified by the court.

(ii) At a review hearing described in Subsection (5)(e)(i):

## HB0385S01 compared with HB0385

(A) the court shall review the status of the defendant and determine whether any changes are needed to the defendant's supervision or treatment plan; and

(B) a party may request, if the party has a good faith basis, that the court review or change the defendant's placement within a secure or non-secure setting.

(f) If a defendant is willfully non-compliant with the treatment or supervision ordered by the court under this Subsection (5), the court shall hold an order to show cause hearing to determine whether the court should:

(i) proceed with sentencing under Subsection (6);

(ii) change the defendant's placement to a secure setting;

(iii) impose another sanction; or

(iv) take no action.

(6) (a) The court shall defer sentencing for a defendant who has pleaded guilty with a mental ~~fitness~~ condition as described in Subsection (5) until:

(i) the court determines, after an order to show cause hearing or a review hearing as described in Subsection (5), that:

(A) the defendant is ~~willfully~~ non-compliant with treatment or supervision and ~~will not benefit from~~ is unlikely to become compliant with further ordered treatment ~~or supervision~~; or

(B) the defendant has reached the maximum benefit of treatment and supervision; or

(ii) one year has elapsed after the day on which the court entered the defendant's plea of guilty with a mental ~~fitness~~ condition.

(b) At the sentencing hearing, the court shall:

(i) consider all treatment and supervision that has occurred before the sentencing hearing in the defendant's case;

(ii) credit any time the defendant has spent in a mental health facility or other residential treatment facility or a secure facility against the defendant's sentence;

(iii) consider victim input; ~~and~~

(iv) consider the best interests of the defendant, including which sentence will help prevent the defendant:

(A) from losing the defendant's ability to control the defendant's state of mental health; and

## HB0385S01 compared with HB0385

(B) from committing additional criminal conduct related to the defendant's mental ~~fitness.~~

~~— (c) The restrictions described in Section 76-3-406 do not apply to a sentence imposed under this section.~~

~~— (7) After condition;~~

(v) consider the best interest of public safety; and

(vi) consider any other relevant factor or circumstance.

(7) Except as provided in Subsection (7)(c), after a defendant who has been sentenced under Subsection (6) has completed the defendant's sentence and any probation or parole ~~imposed pursuant to this section~~;

(a) notwithstanding the contrary provisions in Subsection 76-3-402(4) or ~~Section 76-3-406(1)~~, the court has jurisdiction to enter a judgment of conviction and shall reduce the judgment of conviction for the offense by two degrees from the original offense; and

(b) notwithstanding the contrary provisions in Subsection 76-3-402(4) or ~~Section 7-3-406~~ 76-3-406(1), if the prosecuting attorney specifically agrees in writing or on the court record at any time, the court has jurisdiction to consider and enter a judgment of conviction and may enter a judgment of conviction for the offense that is reduced by up to three degrees from the original offense.

(c) If a defendant's probation is revoked and any suspended sentence is imposed, the defendant may not receive a reduction under this Subsection (7).

(8) (a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.

(b) Travel expenses shall be paid by the county where prosecution is commenced.

(c) Expenses of examination for a defendant charged with a violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

Section ~~4~~ 16. Section 77-16a-104 is amended to read:

**77-16a-104. Verdict of guilty with a mental ~~fitness~~ condition -- Hearing to determine present mental state.**

(1) Upon a verdict of guilty with a mental ~~fitness~~ condition for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.



## HB0385S01 compared with HB0385

(2) (a) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor.

(b) The defendant may be placed in the Utah State Hospital for ~~[that]~~ the examination described in Subsection (2)(a) only upon approval of the executive director.

(3) If the court finds by clear and convincing evidence that the defendant currently has a mental ~~[illness]~~ condition, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental ~~[illness]~~ condition and who is convicted of the same offense, and:

(a) commit the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:

(i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and

(ii) the court finds by clear and convincing evidence that:

(A) because of the defendant's mental ~~[illness]~~ condition the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

(B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;

(b) order probation in accordance with Section 77-16a-201; or

(c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.

(4) In order to ~~[insure]~~ ensure that the requirements of Subsection (3)(a) are met, the court shall, before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.

(5) If the court finds that the defendant does not currently have a mental ~~[illness]~~ condition, the court shall sentence the defendant as it would any other defendant.

## HB0385S01 compared with HB0385

(6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection [~~77-16a-103(5)~~] 77-16a-103(8).

Section 17. Section 77-16a-201 is amended to read:

### Part 2. Disposition of Defendants Found Guilty with a Mental Condition

#### 77-16a-201. Probation.

(1) (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental [illness] condition at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental [illness] condition.

(2) The period of probation for a felony offense committed by a defendant who has been found guilty with a mental [illness] condition at the time of the offense may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release an offender with a mental [illness] condition into the community, as a part of probation, if it finds by clear and convincing evidence that the

## HB0385S01 compared with HB0385

offender:

(a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) An offender with a mental [illness] condition who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Section 18. Section 77-16a-202 is amended to read:

**77-16a-202. Person found guilty with a mental condition-- Commitment to department -- Admission to Utah State Hospital.**

(1) In sentencing and committing an offender with a mental [illness] condition to the department under Subsection 77-16a-104(3)(a) or in a felony case under Subsection 77-16a-103(6), the court shall:

(a) sentence the offender to a term of imprisonment and order that [he] the offender be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) [sentence the offender to a term of imprisonment and] order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court [may recall the sentence and commitment, and resentencing] shall sentence the offender. A [commitment and] retention of jurisdiction under this Subsection (1)(b) shall be specified in [the sentencing] a court order. [If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).]

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental [illness] condition who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital

## HB0385S01 compared with HB0385

sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 19. Section 77-16a-203 is amended to read:

**77-16a-203. Review of offenders with a mental condition committed to department -- Recommendations for transfer to Department of Corrections.**

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental [illness] condition committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of [its] the review team's evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental [illness] condition should be:

(i) transferred to UDC; or

## HB0385S01 compared with HB0385

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator and the board's mental health adviser that an offender with a mental [illness] condition is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental [illness] condition; or

(ii) has a mental [illness] condition and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.

Section 20. Section 77-16a-204 is amended to read:

**77-16a-204. UDC acceptance of transfer of persons found guilty with a mental condition -- Retransfer from UDC to department for admission to the Utah State Hospital.**

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.

(2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental [illness] condition with adequate

## HB0385S01 compared with HB0385

mental health treatment.

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

(4) In the event that the department and UDC do not agree on the transfer of an offender with a mental [illness] condition, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.

(5) UDC shall notify the board whenever an offender with a mental [illness] condition is transferred from the department to UDC.

(6) When an offender with a mental [illness] condition sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

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

(8) An offender with a mental [illness] condition who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Section 21. Section 77-16a-205 is amended to read:

### 77-16a-205. Parole.

(1) When an offender with a mental [illness] condition who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.

(2) Before setting a parole date, the board shall request that its mental health adviser

## HB0385S01 compared with HB0385

prepare a report regarding the offender with a mental [illness] condition, including:

(a) all available clinical facts;

(b) the diagnosis;

(c) the course of treatment received at the mental health facility;

(d) the prognosis for remission of symptoms;

(e) potential for recidivism;

(f) an estimation of the dangerousness of the offender with a mental [illness] condition either to self or others; and

(g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the offender with a mental [illness] condition on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental [illness] condition who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

(5) The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Section 22. Section 77-16a-301 is amended to read:

### **77-16a-301. Mental examination of defendant.**

(1) (a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(2)(a), the court shall order the department to examine the defendant and investigate the defendant's mental condition.

(b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in a proceeding in which the testimony is otherwise admissible.

(c) Pending trial, unless the court or the executive director directs otherwise, the

## HB0385S01 compared with HB0385

defendant shall be retained in the same custody or status the defendant was in at the time the examination was ordered.

(2) (a) The defendant shall be available and shall fully cooperate in the examination by the department and other independent examiners for the defense and the prosecuting attorney.

(b) If the defendant fails to be available and to fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to the defendant's defense of a mental [illness] condition at the trial of the case.

(c) The department shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.

(3) Within 10 days after receipt of the report described in Subsection (2)(c) from the department, but not later than five days before the trial of the case, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of a mental [illness] condition, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The report of another independent examiner is admissible as evidence upon stipulation of the prosecution and defense.

(5) (a) This section does not prevent a party from producing other testimony as to the mental condition of the defendant.

(b) An expert witness who is not appointed by the court is not entitled to compensation under Subsection (7).

(6) This section does not require the admission of evidence not otherwise admissible.

(7) (a) The department shall pay the expenses of an examination ordered by the court under this section.

(b) The department shall charge the county where the prosecution is commenced for travel expenses associated with an examination incurred by a defendant.

(c) The department shall charge the entity commencing the prosecution for an examination of a defendant charged with a violation of a municipal or county ordinance.

Section 23. Section 77-16a-302 is amended to read:

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



## HB0385S01 compared with HB0385

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

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

(a) the defendant has a mental [illness] condition; and

(b) because of that mental [illness] condition the defendant presents a substantial danger to self or others.

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

Section 24. Section 77-16a-304 is amended to read:

### 77-16a-304. Review after commitment.

(1) (a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months.

(b) The team described in Subsection (1)(a) shall include:

(i) at least one psychiatrist; and

(ii) if the defendant has an intellectual disability, at least one staff member who is a designated intellectual disability professional.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental [illness] condition, or, that the defendant still has a mental [illness] condition but does not present a substantial danger to self or others, the executive director, or the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and

(b) provide the court with a report stating the facts that form the basis for the recommendation.

## HB0385S01 compared with HB0385

(3) (a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.

(b) The court clerk shall provide notice of the date and time of the hearing to:

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.

(4) (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:

(i) no longer has a mental [illness] condition; or

(ii) has a mental [illness] condition, but no longer presents a substantial danger to self or others.

(b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:

(i) has a mental [illness] condition;

(ii) is a substantial danger to self or others; and

(iii) can be controlled adequately if conditionally released with treatment as a condition of release.

(c) The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from the defendant's mental [illness] condition;

(ii) is a substantial danger to self or others; and

(iii) cannot adequately be controlled if conditionally released on supervision.

(d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental [illness] condition is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental [illness] condition will reoccur, making the defendant a substantial danger to self or others.

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Section 25. Section 77-16a-305 is amended to read:

## HB0385S01 compared with HB0385

### 77-16a-305. Conditional release.

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that [his] the defendant's mental [illness] condition and dangerousness can be controlled with proper care, medication, supervision, and treatment if [he] the defendant is conditionally released, the review team shall prepare a report and notify the executive director, or [his] the executive director's designee, that the defendant is a candidate for conditional release.

(2) The executive director, or [his] the executive director's designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.

(3) The executive director, or [his] the executive director's designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.

(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to [himself] self or others, [he] the defendant can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.

(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Section 26. Section 77-16a-306 is amended to read:

### 77-16a-306. Continuing review -- Discharge.

(1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental [illness] condition, or, if the defendant has a mental [illness] condition, no longer presents a substantial danger to self or others, [it] the treatment provider shall notify the executive director of [its] the treatment provider's findings.

(2) Upon receipt of notification under Subsection (1), the executive director shall

## HB0385S01 compared with HB0385

designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.

(3) The court may not discharge an individual whose mental [illness] condition is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental [illness] condition will reoccur, making the defendant a substantial danger to self or others.

Section 27. Section 77-27-2 is amended to read:

### **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

(1) (a) There is created the Board of Pardons and Parole.

(b) The board shall consist of five full-time members and not more than five pro tempore members to be appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies, and as provided in this section.

(c) The members of the board shall be resident citizens of the state.

(d) The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) (i) (A) The full-time board members shall serve terms of five years.

(B) The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.

(ii) (A) The pro tempore members shall serve terms of five years, beginning on March 1 of the year of appointment, with no more than one pro tempore member term beginning or expiring in the same calendar year.

(B) If a pro tempore member vacancy occurs, the board may submit the names of not fewer than three or more than five persons to the governor for appointment to fill the vacancy.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the advice and consent of the Senate in accordance with this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

## HB0385S01 compared with HB0385

(d) (i) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.

(ii) A member may not engage in any occupation or business inconsistent with the member's duties.

(e) (i) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any location within or without the state, or for the purpose of exercising any duty or authority of the board.

(ii) An action is deemed the action of the board if the action is taken by a majority of the board regarding whether:

(A) parole, pardon, commutation, or termination of a sentence is granted in an offender's case;

(B) remission of a criminal accounts receivable, or a fines or forfeiture, is granted in an offender's case; or

(C) an offender's payment schedule for a criminal accounts receivable is modified.

(iii) A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute.

(iv) Notwithstanding Subsection (2)(e)(iii), a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(v) A board member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

(f) (i) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board.

(ii) When an action under Subsection (2)(f)(i) is approved and confirmed by the board and filed in the board's office, the action is considered to be the action of the board and has the same effect as if originally made by the board.

(g) (i) When a full-time board member is absent or in other extraordinary circumstances, the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member.

(ii) Pro tempore members shall receive a per diem rate of compensation as established

## HB0385S01 compared with HB0385

by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the department.

(3) (a) Except as provided in Subsection (3)(b), the commission shall:

(i) recommend five applicants to the governor for a full-time member appointment to the board; and

(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.

(4) (a) (i) The board shall appoint an individual to serve as the board's mental health adviser and may appoint other staff necessary to aid the board in fulfilling the board's responsibilities under [~~Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness~~] Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition.

(ii) The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty with a mental [~~illness~~] condition, in accordance with [~~Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness~~] Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition.

(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the department or the Utah State Hospital.

(i) The board may review outside employment by the mental health advisor.

(ii) The board shall develop rules governing employment with entities other than the board by the mental health advisor for the purpose of prohibiting a conflict of interest.

(c) The mental health adviser shall:

(i) act as liaison for the board with the Department of Health and Human Services and local mental health authorities;

(ii) educate the members of the board regarding the needs and special circumstances of persons with a mental [~~illness~~] condition in the criminal justice system;

## HB0385S01 compared with HB0385

(iii) in cooperation with the department, monitor the status of persons in the prison who have been found guilty with a mental [illness] condition;

(iv) monitor the progress of other persons under the board's jurisdiction who have a mental [illness] condition;

(v) conduct hearings as necessary in the preparation of reports and recommendations;  
and

(vi) perform other duties as assigned by the board.

Section 28. Section 77-27-5.3 is amended to read:

### 77-27-5.3. Meritless and bad faith litigation.

(1) For purposes of this section:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental [illness] condition, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) In any case filed in state or federal court in which a prisoner submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the prisoner.

Section 29. Section 77-27-10.5 is amended to read:

### 77-27-10.5. Special condition of parole -- Penalty.

(1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release the defendant on parole and as a condition of parole, the board may order the defendant to be prohibited from directly or indirectly engaging in any profit or benefit generating activity relating to the publication of facts or circumstances pertaining to the defendant's involvement in the criminal act for which the defendant is convicted.

(2) The order may prohibit the defendant from contracting with any person, firm, corporation, partnership, association, or other legal entity with respect to the commission and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article, tape recording, phonograph record, radio, or television presentations, live entertainment of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions regarding the criminal conduct.

## HB0385S01 compared with HB0385

(3) The board may order that the prohibition includes any event undertaken and experienced by the defendant while avoiding apprehension from the authorities or while facing criminal charges.

(4) The board may order that any action taken by the defendant by way of execution of power of attorney, creation of corporate entities, or other action to avoid compliance with the board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

(5) Adult Probation and Parole shall notify the board of any alleged violation of the board's order under this section.

(6) The violation of the board's order shall be considered a violation of parole.

(7) For purposes of this section:

(a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental [illness] condition, no contest, and conviction of any crime or offense; and

(b) "defendant" means the convicted defendant, the defendant's assignees, and representatives acting on the defendant's authority.

Section 30. Section 77-36-1.1 is amended to read:

**77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence offenses.**

(1) As used in this section:

(a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.

(ii) "Convicted" includes:

(A) a plea of guilty or guilty [and mentally ill] with a mental condition;

(B) a plea of no contest; and

(C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(iii) "Convicted" does not include an adjudication in juvenile court.

(b) "Criminal mischief offense" means commission or attempt to commit an offense under Section 76-6-106 by one cohabitant against another.

(c) "Offense against the person" means commission or attempt to commit an offense under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide, Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital



## HB0385S01 compared with HB0385

Mutilation, by one cohabitant against another.

(d) "Qualifying domestic violence offense" means:

(i) a domestic violence offense in Utah; or

(ii) an offense in any other state, or in any district, possession, or territory of the United

States, that would be a domestic violence offense under Utah law.

(2) An individual who is convicted of a domestic violence offense is guilty of a class B misdemeanor if:

(a) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (2):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(3) An individual who is convicted of a domestic violence offense is guilty of a class A misdemeanor if:

(a) the domestic violence offense described in this Subsection (3) is designated by law as a class B misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (3):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(4) An individual who is convicted of a domestic violence offense is guilty of a third degree felony if:

(a) the domestic violence offense described in this Subsection (4) is designated by law as a class B misdemeanor offense against the person and the individual:

(i) (A) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a

## HB0385S01 compared with HB0385

qualifying domestic violence offense that is not a criminal mischief offense; and

(B) is convicted of another qualifying domestic violence offense that is not a criminal mischief offense after the day on which the individual is convicted of the qualifying domestic violence offense described in Subsection (4)(a)(i)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4);

(ii) (A) commits or is convicted of the domestic violence offense described in this Subsection (4) within five years after the day on which the individual is convicted of a criminal mischief offense; and

(B) is convicted of another criminal mischief offense after the day on which the individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4); or

(iii) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense and within five years after the day on which the individual is convicted of a criminal mischief offense; and

(b) (i) the domestic violence offense described in this Subsection (4) is designated by law as a class A misdemeanor; and

(ii) the individual commits or is convicted of the domestic violence offense described in this Subsection (4):

(A) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) within five years after the day on which the individual is convicted of a criminal mischief offense.

Section 31. Section 77-38-302 is amended to read:

### 77-38-302. Definitions.

As used in this part:

(1) "Convicted person" means a person who has been convicted of a crime.

(2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental [illness] condition regardless of whether the sentence was

## HB0385S01 compared with HB0385

imposed or suspended.

(3) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

(4) "Memorabilia" means any tangible property of a convicted person or a representative or assignee of a convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.

(5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:

(a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;

(b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or

(c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.

(6) "Office" means the Utah Office for Victims of Crime.

(7) "Profit" means any income or benefit:

(a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or

(b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

Section 32. Section 77-38b-102 is amended to read:

### 77-38b-102. Definitions.

As used in this chapter:

(1) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(2) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(3) (a) "Conviction" means:

(i) a plea of:

(A) guilty;

## HB0385S01 compared with HB0385

(B) guilty with a mental [illness] condition; or

(C) no contest; or

(ii) a judgment of:

(A) guilty; or

(B) guilty with a mental [illness] condition.

(b) "Conviction" does not include:

(i) a plea in abeyance until a conviction is entered for the plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section 80-6-701.

(4) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

(5) "Criminal conduct" means:

(a) any misdemeanor or felony offense of which the defendant is convicted; or

(b) any other criminal behavior for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal behavior.

(6) (a) "Defendant" means an individual who has been convicted of, or entered into a plea disposition for, criminal conduct.

(b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6, Juvenile Justice.

(7) "Department" means the Department of Corrections.

(8) "Diversion agreement" means an agreement entered into by the prosecuting attorney and the defendant that suspends criminal proceedings before conviction on the condition that a defendant agree to participate in a rehabilitation program, pay restitution to the victim, or fulfill some other condition.

(9) "Office" means the Office of State Debt Collection created in Section 63A-3-502.

(10) "Party" means the prosecuting attorney, the defendant, or the department involved in a prosecution.

(11) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(12) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and

## HB0385S01 compared with HB0385

expenses regardless of whether the economic injury, losses, and expenses have yet been incurred.

(b) "Pecuniary damages" does not include punitive damages or pain and suffering damages.

(13) "Plea agreement" means an agreement entered between the prosecuting attorney and the defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(14) "Plea disposition" means an agreement entered into between the prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(15) "Plea in abeyance" means an order by a court, upon motion of the prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

(16) "Plea in abeyance agreement" means an agreement entered into between the prosecuting attorney and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(17) "Restitution" means the payment of pecuniary damages to a victim.

(18) (a) "Victim" means any person who has suffered pecuniary damages that are proximately caused by the criminal conduct of the defendant.

(b) "Victim" includes:

(i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes a payment to a victim under Section 63M-7-519;

(ii) the estate of a deceased victim; and

(iii) a parent, spouse, or sibling of a victim.

(c) "Victim" does not include a codefendant or accomplice.

Section 33. Section 78A-2-302 is amended to read:

**78A-2-302. Indigent litigants -- Affidavit.**

(1) As used in Sections 78A-2-302 through 78A-2-309:

## HB0385S01 compared with HB0385

(a) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental [illness] condition, no contest; and

(ii) a conviction of any crime or offense.

(b) "Indigent" means an individual who is financially unable to pay fees and costs or give security.

(c) "Prisoner" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if the individual submits an affidavit demonstrating that the individual is indigent.

(3) A court shall find an individual indigent if the individual's affidavit under Subsection (2) demonstrates:

(a) the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(b) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

(c) the individual receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

(d) the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

(4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d) shall contain complete information on the individual's:

(a) identity and residence;

(b) amount of income, including any government financial support, alimony, or child support;

(c) assets owned, including real and personal property;

(d) business interests;

## HB0385S01 compared with HB0385

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

(5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the amount of money held in the prisoner's trust account at the time the affidavit under Subsection (2) is executed in accordance with Section 78A-2-305.

(6) An affidavit of indigency under this section shall state the following:

I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Section 34. Section 78B-7-901 is amended to read:

### 78B-7-901. Definitions.

As used in this part:

(1) "Conviction" means:

(a) a verdict or conviction;

(b) a plea of guilty or guilty [and mentally ill] with a mental condition;

(c) a plea of no contest; or

(d) the acceptance by the court of a plea in abeyance.

(2) "Immediate family" means the same as that term is defined in Section 76-5-106.5.

Section 35. Section 80-2-1004 is amended to read:

### 80-2-1004. Request for division removal of name from Licensing Information System -- Petition for evidentiary hearing or substantiation.

(1) Except as provided in Subsection (2), an individual whose name is listed on the Licensing Information System as of May 6, 2002, may at any time:

(a) request review by the division of the individual's case and removal of the individual's name from the Licensing Information System under Subsection (3); or

(b) file a petition for substantiation and a request for a finding of unsubstantiated or without merit in accordance with Section 80-3-504.

(2) Subsection (1) does not apply to an individual who has been the subject of any of

## HB0385S01 compared with HB0385

the following court determinations with respect to the alleged incident of abuse or neglect:

(a) conviction;

(b) adjudication under Section 80-3-402 or 80-6-701;

(c) plea of guilty;

(d) plea of guilty with a mental [illness] condition; or

(e) no contest.

(3) If an alleged perpetrator listed on the Licensing Information System before May 6, 2002, requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days after the day on which the request is made:

(a) (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:

(A) a severe type of child abuse or neglect;

(B) chronic abuse; or

(C) chronic neglect; and

(ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from the Licensing Information System; or

(b) determine whether to file a petition for substantiation in accordance with Section 80-3-504.

### Section 36. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the terms "guilty with a mental illness" and "guilty and mentally ill" with "guilty with a mental condition" in any new language added to the Utah Code by legislation passed during the 2023 General Session.