

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: Todd D. Weiler

LONG TITLE

General Description:

This bill concerns offenders with a mental 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 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:



26 This bill provides revisor instructions.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 [53-10-208.1](#), as last amended by Laws of Utah 2021, Chapter 159

30 [53-10-403.5](#), as last amended by Laws of Utah 2020, Chapter 415

31 [62A-15-610](#), as last amended by Laws of Utah 2011, Chapter 366

32 [62A-15-623](#), as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
33 Chapter 8

34 [62A-15-902](#), as last amended by Laws of Utah 2011, Chapter 366

35 [76-2-305](#), as last amended by Laws of Utah 2016, Chapter 115

36 [76-3-201](#), as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last
37 amended by Coordination Clause, Laws of Utah 2021, Chapter 261

38 [76-3-406](#), as last amended by Laws of Utah 2022, Chapter 181

39 [76-5-205.5](#), as last amended by Laws of Utah 2022, Chapter 181

40 [76-5-303.5](#), as last amended by Laws of Utah 2022, Chapter 181

41 [76-10-1311](#), as last amended by Laws of Utah 2008, Chapter 382

42 [77-13-1](#), as last amended by Laws of Utah 2011, Chapter 366

43 [77-16a-101](#), as last amended by Laws of Utah 2011, Chapter 366

44 [77-16a-102](#), as last amended by Laws of Utah 2019, Chapter 312

45 [77-16a-104](#), as last amended by Laws of Utah 2011, Chapter 366

46 [77-16a-201](#), as last amended by Laws of Utah 2018, Chapter 334

47 [77-16a-202](#), as last amended by Laws of Utah 2011, Chapter 366

48 [77-16a-203](#), as last amended by Laws of Utah 2011, Chapter 366

49 [77-16a-204](#), as last amended by Laws of Utah 2011, Chapter 366

50 [77-16a-205](#), as last amended by Laws of Utah 2018, Chapter 334

51 [77-16a-301](#), as last amended by Laws of Utah 2019, Chapter 312

52 [77-16a-302](#), as last amended by Laws of Utah 2011, Chapter 366

53 [77-16a-304](#), as last amended by Laws of Utah 2011, Chapter 366

54 [77-16a-305](#), as last amended by Laws of Utah 1993, Chapter 285

55 [77-16a-306](#), as last amended by Laws of Utah 2011, Chapter 366

56 [77-27-2](#), as last amended by Laws of Utah 2021, Chapter 260

- 57 [77-27-5.3](#), as last amended by Laws of Utah 2011, Chapter 366
- 58 [77-27-10.5](#), as last amended by Laws of Utah 2011, Chapter 366
- 59 [77-36-1.1](#), as last amended by Laws of Utah 2021, Chapter 213
- 60 [77-38-302](#), as last amended by Laws of Utah 2020, Chapter 230
- 61 [77-38b-102](#), as last amended by Laws of Utah 2022, Chapter 359
- 62 [78A-2-302](#), as last amended by Laws of Utah 2022, Chapter 272
- 63 [78B-7-901](#), as enacted by Laws of Utah 2020, Chapter 142
- 64 [80-2-1004](#), as renumbered and amended by Laws of Utah 2022, Chapter 334

65 REPEALS AND REENACTS:

- 66 [77-16a-103](#), as last amended by Laws of Utah 2011, Chapter 366



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

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

70 **53-10-208.1. Magistrates and court clerks to supply information.**

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

- 74 (a) all dispositions of criminal matters, including:
 - 75 (i) guilty pleas;
 - 76 (ii) convictions;
 - 77 (iii) dismissals;
 - 78 (iv) acquittals;
 - 79 (v) pleas held in abeyance;
 - 80 (vi) judgments of not guilty by reason of insanity;
 - 81 (vii) judgments of guilty with a mental ~~[illness]~~ condition;
 - 82 (viii) finding of mental incompetence to stand trial; and
 - 83 (ix) probations granted;

84 (b) orders of civil commitment under the terms of Section [62A-15-631](#);

85 (c) the issuance, recall, cancellation, or modification of all warrants of arrest or
86 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section [78B-6-303](#),
87 within one day of the action and in a manner provided by the division; and

- 88 (d) protective orders issued after notice and hearing, pursuant to:
- 89 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
- 90 (ii) Title 78B, Chapter 7, Part 4, Dating Violence Protective Orders;
- 91 (iii) Title 78B, Chapter 7, Part 5, Sexual Violence Protective Orders;
- 92 (iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders; or
- 93 (v) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

94 (2) The court in the county where a determination or finding was made shall transmit a
95 record of the determination or finding to the bureau no later than 48 hours after the
96 determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:

- 97 (a) adjudicated as a mental defective; or
- 98 (b) involuntarily committed to a mental institution in accordance with Subsection
99 [62A-15-631](#)(16).

100 (3) The record described in Subsection (2) shall include:

- 101 (a) an agency record identifier;
- 102 (b) the individual's name, sex, race, and date of birth; and
- 103 (c) the individual's social security number, government issued driver license or
104 identification number, alien registration number, government passport number, state
105 identification number, or FBI number.

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

107 **53-10-403.5. Definitions.**

108 As used in Sections [53-10-403](#), [53-10-404](#), [53-10-404.5](#), [53-10-405](#), and [53-10-406](#):

- 109 (1) "Bureau" means the Bureau of Forensic Services.
- 110 (2) "Combined DNA Index System" or "CODIS" means the program operated by the
111 Federal Bureau of Investigation to support criminal justice DNA databases and the software
112 used to run the databases.
- 113 (3) "Conviction" means:
 - 114 (a) a verdict or conviction;
 - 115 (b) a plea of guilty or guilty [~~and mentally ill~~] with a mental condition;
 - 116 (c) a plea of no contest; or
 - 117 (d) the acceptance by the court of a plea in abeyance.
- 118 (4) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

126 **62A-15-610. Objectives of state hospital and other facilities -- Persons who may**
127 **be admitted to state hospital.**

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

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

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

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

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

142 (d) persons adjudicated and found to be not guilty by reason of insanity who are under
143 a subsequent commitment order because they have a mental illness and are a danger to
144 themselves or others, under Section [77-16a-302](#);

145 (e) persons found incompetent to proceed under Section [77-15-6](#);

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

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

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

151 **62A-15-623. Criminal's escape -- Penalty.**

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

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

158 **62A-15-902. Design and operation -- Security.**

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

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

161 (i) prison inmates displaying mental illness, as defined in Section **62A-15-602**,

162 necessitating treatment in a secure mental health facility;

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

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

173 (iv) persons undergoing evaluation for competency or found by a court to be
174 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of
175 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

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

180 (vi) persons ordered to commit themselves to the custody of the Division of Substance

181 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or
182 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

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

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

189 (3) The department shall:

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

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

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

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

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

196 **76-2-305. Mental condition -- Use as a defense -- Influence of alcohol or other**
197 **substance voluntarily consumed.**

198 (1) As used in this section:

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

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

203 (b) "Mental disability" means an intellectual disability or a neurodevelopmental
204 disorder as those terms are defined in the current edition of the Diagnostic and Statistical
205 Manual of Mental Disorders published by the American Psychiatric Association.

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

209 (i) schizophrenia spectrum and other psychotic disorders; or

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

211 [(+)] (2) (a) It is a defense to a prosecution under any statute or ordinance that the

212 defendant, as a result of a mental [illness] condition, lacked the mental state required as an
213 element of the offense charged.

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

218 ~~[(2)]~~ (3) The defense defined in this section includes the defenses known as "insanity"
219 and "diminished mental capacity."

220 ~~[(3)]~~ (4) A person who asserts a defense of insanity or diminished mental capacity, and
221 who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled
222 substances, or volatile substances at the time of the alleged offense is not excused from
223 criminal responsibility on the basis of a mental [illness] condition if the alcohol or substance
224 caused, triggered, or substantially contributed to the mental [illness] condition.

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

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

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

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

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

236 **76-3-201. Sentences or combination of sentences allowed -- Restitution and other**
237 **costs -- Civil penalties.**

238 (1) As used in this section:

239 (a) (i) "Convicted" means:

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

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

243 condition.

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

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

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

249 (a) to pay a fine;

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

251 (c) except as otherwise provided by law, to probation in accordance with Section
252 77-18-105;

253 (d) to imprisonment;

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

255 (f) to death.

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

257 (i) to forfeit property;

258 (ii) to dissolve a corporation;

259 (iii) to suspend or cancel a license;

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

261 (v) to cite for contempt; or

262 (vi) to impose any other civil penalty.

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

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

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

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

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

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

273 (iii) convicted of an offense;

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

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

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

280 (d) subject to Subsection (6) and Subsections 77-32b-104(2), (3), and (4), pay the cost
281 of medical care, treatment, hospitalization, and related transportation, as described in Section
282 17-50-319, that is provided by a county to the individual while the individual is in a county
283 correctional facility before and after sentencing if:

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

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

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

290 (e) pay any other cost that the court determines is appropriate under Section
291 77-32b-104.

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

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

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

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

299 (A) \$100 for up to 100 miles that an individual is transported;

300 (B) \$200 for 100 miles to 200 miles that an individual is transported; and

301 (C) \$350 for 200 miles or more that an individual is transported.

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

304 (6) The cost of medical care under Subsection (4)(d) does not include expenses

305 incurred by the county correctional facility in providing reasonable accommodation for an
 306 inmate qualifying as an individual with a disability as defined and covered by the Americans
 307 with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health
 308 treatment for the inmate's disability.

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

310 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
 311 **offense, or hospitalization may not be granted.**

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

- 320 (a) Section [76-5-202](#), aggravated murder;
- 321 (b) Section [76-5-203](#), murder;
- 322 (c) Section [76-5-301.1](#), child kidnaping;
- 323 (d) Section [76-5-302](#), aggravated kidnaping;
- 324 (e) Section [76-5-402](#), rape, if the individual is sentenced under Subsection
 325 [76-5-402](#)(3)(b), (3)(c), or (4);
- 326 (f) Section [76-5-402.1](#), rape of a child;
- 327 (g) Section [76-5-402.2](#), object rape, if the individual is sentenced under Subsection
 328 [76-5-402.2](#)(3)(b), (3)(c), or (4);
- 329 (h) Section [76-5-402.3](#), object rape of a child;
- 330 (i) Section [76-5-403](#), forcible sodomy, if the individual is sentenced under Subsection
 331 [76-5-403](#)(3)(b), (3)(c), or (4);
- 332 (j) Section [76-5-403.1](#), sodomy on a child;
- 333 (k) Section [76-5-404](#), forcible sexual abuse, if the individual is sentenced under
 334 Subsection [76-5-404](#)(3)(b)(i) or (ii);
- 335 (l) Section [76-5-404.3](#), aggravated sexual abuse of a child;

336 (m) Section 76-5-405, aggravated sexual assault; or
337 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
338 (2) Except for an offense before the district court in accordance with Section 80-6-502
339 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the
340 defendant:

- 341 (a) was under 18 years old at the time of the offense; and
- 342 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
343 delayed filing of the information.

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

345 **76-5-205.5. Special mitigation for mental condition or provocation -- Burden of**
346 **proof -- Charge reduction.**

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

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

- 350 (I) causes the defendant to be incapable of reflection and restraint; and
- 351 (II) would cause an objectively reasonable person to be incapable of reflection and
352 restraint.

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

- 354 (I) a condition resulting from [~~mental illness~~] a mental condition; or
- 355 (II) distress that is substantially caused by the defendant's own conduct.

356 (ii) "Mental [~~illness~~] condition" means the same as that term is defined in Section
357 76-2-305.

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

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

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

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

366 (iii) the defendant's actions, in light of the delusion, are reasonable from the objective

367 viewpoint of a reasonable person; or

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

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

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

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

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

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

386 (5) If the trier of fact finds that the elements of aggravated murder, attempted
387 aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and
388 also finds that the existence of special mitigation under this section is established by a
389 preponderance of the evidence, the court shall enter a judgment of conviction in accordance
390 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),
391 respectively.

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

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

397 (b) If the jury unanimously finds that the elements of an offense described in

398 Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a
399 unanimous vote, the jury shall return a general verdict finding the defendant guilty of the
400 charged crime and a special verdict indicating special mitigation.

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

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

407 **76-5-303.5. Notification of conviction of custodial interference.**

408 (1) As used in this section:

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

411 (ii) "Convicted" includes:

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

413 (B) a plea of no contest; and

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

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

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

421 (a) a class B misdemeanor, under Subsection **76-5-303(3)(a)**;

422 (b) a class A misdemeanor, under Subsection **76-5-303(3)(b)**; or

423 (c) a felony, under Subsection **76-5-303(3)(c)**.

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

425 **76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil**
426 **liability.**

427 (1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty [~~and~~
428 ~~mentally ill~~] with a mental condition, or been found guilty for violation of Section **76-10-1302**,

429 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the
430 offender is an HIV positive individual. The mandatory test shall be required and conducted
431 prior to sentencing.

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

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

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

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

441 (a) the HIV infection test results;

442 (b) a copy of the written notice as provided in Section 76-10-1312;

443 (c) photographic identification; and

444 (d) fingerprint identification.

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

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

450 (8) (a) The laboratory performing testing shall report test results to only designated
451 officials in the Department of Corrections, the Department of Health, and the local law
452 enforcement agency submitting the blood specimen.

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

454 (c) Designated officials may release information identifying an offender under Section
455 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under
456 Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

457 (9) (a) An employee of the local law enforcement agency, the Department of
458 Corrections, or the Department of Health who discloses the HIV test results under this section
459 is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided

460 in Section 63G-7-202.

461 (b) An employee of the local law enforcement agency, the Department of Corrections,
462 or the Department of Health who discloses the HIV test results under this section is not civilly
463 or criminally liable, except when disclosure constitutes a knowing violation of Section
464 63G-2-801.

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

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

469 **77-13-1. Kinds of pleas.**

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

471 (a) not guilty;

472 (b) guilty;

473 (c) no contest;

474 (d) not guilty by reason of insanity; and

475 (e) guilty with a mental [illness] condition at the time of the offense.

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

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

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

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

481 **77-16a-101. Definitions.**

482 As used in this chapter:

483 (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

484 (2) "Department" means the Department of Health and Human Services.

485 (3) "Executive director" means the executive director of the Department of Health and
486 Human Services.

487 (4) "Forensic evaluator" means a licensed mental health professional who is:

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

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

491 (5) "Mental condition" means the same as that term is defined in Section [76-2-305](#).

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

493 ~~[(4)]~~ (7) "Mental health facility" means the Utah State Hospital or other facility that
494 provides mental health services under contract with the division, a local mental health
495 authority, or organization that contracts with a local mental health authority.

496 (8) "Mental health supervision" includes regular and periodic activities including:

497 (a) the review of a defendant's assessment, diagnostic formulation, individual service
498 plan development, and progress toward completion of care; and

499 (b) identification of barriers to a defendant's care, assistance in removing barriers to a
500 defendant's care, continuation of services to a defendant, authorization of care for a defendant,
501 and the observation of the delivery of clinical care to a defendant.

502 ~~[(5)]~~ (9) "Mental illness" ~~[is-as]~~ means the same as that term is defined in Section
503 [76-2-305](#).

504 ~~[(6)]~~ (10) "Offender with a mental ~~[illness]~~ condition" means an individual who has
505 been adjudicated guilty with a mental ~~[illness, including an individual who has an intellectual~~
506 ~~disability]~~ condition.

507 (11) "Secure setting" means a jail, prison, or locked inpatient medical facility approved
508 by the department.

509 ~~[(7)]~~ (12) "UDC" means the Department of Corrections.

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

511 **77-16a-102. Jury instructions.**

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

514 (a) guilty;

515 (b) guilty with a mental ~~[illness]~~ condition at the time of the offense;

516 (c) guilty of a lesser offense;

517 (d) guilty of a lesser offense with a mental ~~[illness]~~ condition at the time of the offense;

518 (e) not guilty by reason of insanity; or

519 (f) not guilty.

520 (2) (a) When a defendant asserts a mental defense pursuant to Section [76-2-305](#) or
521 asserts special mitigation reducing the level of an offense pursuant to Subsection

522 76-5-205.5(2)(a), or when the evidence raises the issue and either party requests the instruction,
523 the court shall instruct the jury that if the jury finds a defendant guilty by proof beyond a
524 reasonable doubt of a charged offense or lesser included offense, the jury shall also return a
525 special verdict indicating whether the jury finds that the defendant had a mental [illness]
526 condition at the time of the offense.

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

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

535 (d) If the jury finds the defendant guilty of the charged offense or a lesser included
536 offense and does not find that the defendant had a mental [illness] condition at the time of the
537 offense, the jury shall return a verdict of "guilty" of the offense, along with the special verdict
538 form indicating that the jury did not find that the defendant had a mental [illness] condition at
539 the time of the offense.

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

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

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

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

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

555 Section 15. Section **77-16a-103** is repealed and reenacted to read:

556 **77-16a-103. Plea of guilty with a mental condition-- Procedures -- Sentencing --**
557 **Reduction -- Costs.**

558 (1) (a) (i) If a defendant wishes to enter a plea of guilty with a mental condition, the
559 parties may stipulate as to:

560 (A) whether the defendant had a mental condition at the time of the commission of the
561 offense; and

562 (B) whether the defendant could benefit from available supervision or treatment.

563 (ii) If the parties stipulate as described in Subsection (1)(a)(i), the court shall enter
564 findings consistent with the parties' stipulation.

565 (b) If the parties do not stipulate to Subsection (1)(a)(i), the court shall hold a hearing
566 and determine, by clear and convincing evidence:

567 (i) whether the defendant had a mental condition at the time of the commission of the
568 offense; and

569 (ii) whether the defendant could benefit from available supervision or treatment.

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

572 (i) if the court finds that the defendant had a mental condition at the time of the
573 offense, the court shall accept the defendant's plea of guilty with a mental condition; or

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

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

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

583 (ii) whether the defendant could benefit from available supervision or treatment; or

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

585 (b) (i) If a defendant wishes to enter a plea of guilty with a mental condition for a
586 misdemeanor offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the
587 hearing described in Subsection (1)(b), the court may order the defendant to submit to an
588 examination by a forensic evaluator.

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

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

593 (B) whether the defendant could benefit from available supervision or treatment; or

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

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

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

600 (b) the department or a forensic evaluator if the offense is a misdemeanor.

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

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

609 (i) shall order:

610 (A) the department to provide a treatment assessment of the defendant and to submit to
611 the court treatment recommendations for the defendant; or

612 (B) the defendant to arrange for a treatment assessment of the defendant with a private
613 provider and for the private provider to submit to the court treatment recommendations for the
614 defendant;

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

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

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

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

621 (ii) if a party does not agree with treatment recommendations issued by the department
622 under Subsection (5)(a)(i)(A), hold a hearing on the issue of the department's recommendations
623 and make appropriate modifications to the recommendations if necessary; and

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

626 (c) (i) In determining treatment and supervision recommendations under Subsection
627 (5)(b), the court may order the defendant to be placed in a secure setting as described in
628 Subsections (5)(c)(ii) and (iii) if the court finds that the placement would be in the best interest
629 of the defendant, a victim of the defendant, or public safety.

630 (ii) (A) If the offense is a class C misdemeanor, the court may not place the defendant
631 in a secure setting for more than 90 days.

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

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

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

639 (A) evaluate the defendant; and

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

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

644 (i) if the offense is a felony:

645 (A) supervision by Adult Probation and Parole for a period of up to one year in

646 accordance with the applicable supervision provisions described in Title 64, Chapter 13,
647 Department of Corrections - State Prison ; or

648 (B) supervision including mental health supervision by a public or private entity that
649 provides mental or behavioral health services and is approved by the department or the court;
650 or

651 (ii) if the offense is a misdemeanor, supervision including mental health supervision
652 by:

653 (A) a local mental health authority; or

654 (B) a public or private entity that provides mental or behavioral health services and is
655 approved by the department or the court.

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

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

660 (A) the department or the department's designee shall report on the progress of the
661 defendant, provide recommendations for the defendant's future care, treatment, and secure or
662 insecure placement, and advise the court on the medical necessity of treatments for the
663 defendant;

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

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

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

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

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

673 (iii) impose another sanction; or

674 (iv) take no action.

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

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

679 (A) the defendant is willfully non-compliant with treatment or supervision and is
680 unlikely to become compliant with further ordered treatment or supervision; or
681 (B) the defendant has reached the maximum benefit of treatment and supervision; or
682 (ii) one year has elapsed after the day on which the court entered the defendant's plea of
683 guilty with a mental condition.

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

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

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

689 (iii) consider victim input;

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

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

694 (B) from committing additional criminal conduct related to the defendant's mental
695 condition;

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

697 (vi) consider any other relevant factor or circumstance.

698 (7) Except as provided in Subsection (7)(c), after a defendant who has been sentenced
699 under Subsection (6) has completed the defendant's sentence and any probation or parole:

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

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

707 (c) If a defendant's probation is revoked and any suspended sentence is imposed, the

708 defendant may not receive a reduction under this Subsection (7).

709 (8) (a) (i) When the offense is a state offense, expenses of examination, observation,
710 and treatment for the defendant shall be paid by the department when not paid for or
711 reimbursed by the defendant's insurance.

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

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

716 (b) (i) Provisions in this part for the support at public expense of a defendant with a
717 mental condition do not release an insurer or the estate of a defendant with a mental condition
718 from liability for the care or treatment of the defendant with a mental condition.

719 (ii) The department is authorized to collect amounts spent on a defendant with a mental
720 condition from an insurer or an estate of the defendant with a mental condition.

721 (iii) A health insurance company may not deny coverage for court-ordered treatment or
722 supervision of a defendant with a mental condition that would otherwise be a covered benefit
723 under the defendant's insurance plan based on the fact that the treatment or supervision is
724 ordered by a court.

725 Section 16. Section **77-16a-104** is amended to read:

726 **77-16a-104. Verdict of guilty with a mental condition -- Hearing to determine**
727 **present mental state.**

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

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

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

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

739 the same offense, and:

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

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

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

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

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

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

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

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

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

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

764 Section 17. Section [77-16a-201](#) is amended to read:

765 **Part 2. Disposition of Defendants Found Guilty with a Mental Condition**
766 **[77-16a-201. Probation.](#)**

767 (1) (a) In felony cases, when the court proposes to place on probation a defendant who
768 has pled or is found guilty with a mental [~~illness~~] condition at the time of the offense, it shall
769 request UDC to provide a presentence investigation report regarding whether probation is

770 appropriate for that defendant and, if so, recommending a specific treatment program. If the
771 defendant is placed on probation, that treatment program shall be made a condition of
772 probation, and the defendant shall remain under the jurisdiction of the sentencing court.

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

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

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

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

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

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

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

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

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

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

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

802 **77-16a-202. Person found guilty with a mental condition-- Commitment to**
803 **department -- Admission to Utah State Hospital.**

804 (1) In sentencing and committing an offender with a mental ~~[illness]~~ condition to the
805 department under Subsection 77-16a-104(3)(a) or in a felony case under Subsection
806 77-16a-103(6), the court shall:

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

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

821 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of
822 an offender with a mental ~~[illness]~~ condition who has been convicted of a capital felony. In
823 capital cases, the court shall make the findings required by this section after the capital
824 sentencing proceeding mandated by Section 76-3-207.

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

830 (4) The period of commitment to the department and admission to the Utah State
831 Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section

832 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of
833 that sentence, the administrator of the facility where the offender is located may initiate civil
834 proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for
835 People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

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

837 **77-16a-203. Review of offenders with a mental condition committed to**
838 **department -- Recommendations for transfer to Department of Corrections.**

839 (1) (a) The executive director shall designate a review team of at least three qualified
840 staff members, including at least one licensed psychiatrist, to evaluate the mental condition of
841 each offender with a mental [illness] condition committed to it in accordance with Section
842 77-16a-202, at least once every six months.

843 (b) If the offender has an intellectual disability, the review team shall include at least
844 one individual who is a designated intellectual disability professional, as defined in Section
845 62A-5-101.

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

848 (a) regarding the offender's:

849 (i) current mental condition;

850 (ii) progress since commitment; and

851 (iii) prognosis; and

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

854 (i) transferred to UDC; or

855 (ii) remain in the custody of the department.

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

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

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

862 (iii) the offender's condition has been stabilized to the point that commitment to the

863 department and admission to the Utah State Hospital are no longer necessary to ensure
864 adequate mental health treatment.

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

868 (i) all available clinical facts;

869 (ii) the diagnosis;

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

871 (iv) the prognosis for remission of symptoms;

872 (v) the potential for recidivism;

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

874 (vii) recommendations for future treatment.

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

876 **77-16a-204. UDC acceptance of transfer of persons found guilty with a mental**
877 **condition -- Retransfer from UDC to department for admission to the Utah State**
878 **Hospital.**

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

884 (2) The transfer team shall concur in the recommendation if the transfer team
885 determines that UDC can provide the offender with a mental ~~[illness]~~ condition with adequate
886 mental health treatment.

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

891 (4) In the event that the department and UDC do not agree on the transfer of an
892 offender with a mental ~~[illness]~~ condition, the administrator of the mental health facility where
893 the offender is located shall notify the mental health adviser for the board, in writing, of the

894 dispute. The mental health adviser shall be provided with copies of all reports and
895 recommendations. The board's mental health adviser shall make a recommendation to the
896 board on the transfer and the board shall issue its decision within 30 days.

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

899 (6) When an offender with a mental [illness] condition sentenced under Section
900 [77-16a-202](#), who has been transferred from the department to UDC, and accepted by UDC, is
901 evaluated and it is determined that the offender's mental condition has deteriorated or that the
902 offender has become mentally unstable, the offender may be readmitted to the Utah State
903 Hospital in accordance with the findings and procedures described in Section [62A-15-605.5](#).

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

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

910 Section 21. Section [77-16a-205](#) is amended to read:

911 **[77-16a-205. Parole.](#)**

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

916 (2) Before setting a parole date, the board shall request that its mental health adviser
917 prepare a report regarding the offender with a mental [illness] condition, including:

918 (a) all available clinical facts;

919 (b) the diagnosis;

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

921 (d) the prognosis for remission of symptoms;

922 (e) potential for recidivism;

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

925 (g) recommendations for future treatment.

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

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

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

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

938 **77-16a-301. Mental examination of defendant.**

939 (1) (a) When the court receives notice that a defendant intends to claim that the
940 defendant is not guilty by reason of insanity or that the defendant had diminished mental
941 capacity, or that the defendant intends to assert special mitigation under Subsection
942 [76-5-205.5\(2\)\(a\)](#), the court shall order the department to examine the defendant and investigate
943 the defendant's mental condition.

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

947 (c) Pending trial, unless the court or the executive director directs otherwise, the
948 defendant shall be retained in the same custody or status the defendant was in at the time the
949 examination was ordered.

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

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

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

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

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

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

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

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

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

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

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

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

978 **77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

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

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

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

986 (b) because of that mental [illness] condition the defendant presents a substantial

987 danger to self or others.

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

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

994 **77-16a-304. Review after commitment.**

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

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

999 (i) at least one psychiatrist; and

1000 (ii) if the defendant has an intellectual disability, at least one staff member who is a
1001 designated intellectual disability professional.

1002 (2) If the review team described in Subsection (1) finds that the defendant has
1003 recovered from the defendant's mental ~~[illness]~~ condition, or, that the defendant still has a
1004 mental ~~[illness]~~ condition but does not present a substantial danger to self or others, the
1005 executive director, or the executive director's designee, shall:

1006 (a) notify the court that committed the defendant that the defendant is a candidate for
1007 discharge; and

1008 (b) provide the court with a report stating the facts that form the basis for the
1009 recommendation.

1010 (3) (a) The court shall conduct a hearing within 10 business days after receipt of the
1011 executive director's, or the executive director's designee's, notification.

1012 (b) The court clerk shall provide notice of the date and time of the hearing to:

1013 (i) the prosecuting attorney;

1014 (ii) the defendant's attorney; and

1015 (iii) any victim of the crime for which the defendant was found not guilty by reason of
1016 insanity.

1017 (4) (a) The court shall order that the defendant be discharged from commitment if the

1018 court finds that the defendant:

1019 (i) no longer has a mental [~~illness~~] condition; or

1020 (ii) has a mental [~~illness~~] condition, but no longer presents a substantial danger to self
1021 or others.

1022 (b) The court shall order the person conditionally released in accordance with Section
1023 [77-16a-305](#) if the court finds that the defendant:

1024 (i) has a mental [~~illness~~] condition;

1025 (ii) is a substantial danger to self or others; and

1026 (iii) can be controlled adequately if conditionally released with treatment as a condition
1027 of release.

1028 (c) The court shall order that the commitment be continued if the court finds that the
1029 defendant:

1030 (i) has not recovered from the defendant's mental [~~illness~~] condition;

1031 (ii) is a substantial danger to self or others; and

1032 (iii) cannot adequately be controlled if conditionally released on supervision.

1033 (d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a
1034 defendant whose mental [~~illness~~] condition is in remission as a result of medication or
1035 hospitalization if it can be determined within reasonable medical probability that without
1036 continued medication or hospitalization the defendant's mental [~~illness~~] condition will reoccur,
1037 making the defendant a substantial danger to self or others.

1038 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection
1039 (4)(d)(i) may be a candidate for conditional release, in accordance with Section [77-16a-305](#).

1040 Section 25. Section [77-16a-305](#) is amended to read:

1041 **[77-16a-305. Conditional release.](#)**

1042 (1) If the review team finds that a defendant is not eligible for discharge, in accordance
1043 with Section [77-16a-304](#), but that [~~his~~] the defendant's mental [~~illness~~] condition and
1044 dangerousness can be controlled with proper care, medication, supervision, and treatment if
1045 [~~he~~] the defendant is conditionally released, the review team shall prepare a report and notify
1046 the executive director, or [~~his~~] the executive director's designee, that the defendant is a
1047 candidate for conditional release.

1048 (2) The executive director, or [~~his~~] the executive director's designee, shall prepare a

1049 conditional release plan, listing the type of care and treatment that the individual needs and
1050 recommending a treatment provider.

1051 (3) The executive director, or [~~his~~] the executive director's designee, shall provide the
1052 court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by
1053 the review team under Subsection (1), and the conditional release plan. The court shall
1054 conduct a hearing on the issue of conditional release within 30 days after receipt of those
1055 documents.

1056 (4) The court may order that a defendant be conditionally released if it finds that, even
1057 though the defendant presents a substantial danger to [~~himself~~] self or others, [~~he~~] the
1058 defendant can be adequately controlled with supervision and treatment that is available and
1059 provided for in the conditional release plan.

1060 (5) The department may provide treatment or contract with a local mental health
1061 authority or other public or private provider to provide treatment for a defendant who is
1062 conditionally released under this section.

1063 Section 26. Section **77-16a-306** is amended to read:

1064 **77-16a-306. Continuing review -- Discharge.**

1065 (1) Each entity that provides treatment for a defendant committed to the department as
1066 not guilty by reason of insanity under this part shall review the status of each defendant at least
1067 once every six months. If the treatment provider finds that a defendant has recovered from the
1068 defendant's mental [~~illness~~] condition, or, if the defendant has a mental [~~illness~~] condition, no
1069 longer presents a substantial danger to self or others, [~~it~~] the treatment provider shall notify the
1070 executive director of [~~its~~] the treatment provider's findings.

1071 (2) Upon receipt of notification under Subsection (1), the executive director shall
1072 designate a review team, in accordance with Section **77-16a-304**, to evaluate the defendant. If
1073 that review team concurs with the treatment provider's assessment, the executive director shall
1074 notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a
1075 candidate for discharge. The court shall conduct a hearing, in accordance with Section
1076 **77-16a-302**, within 10 business days after receipt of that notice.

1077 (3) The court may not discharge an individual whose mental [~~illness~~] condition is in
1078 remission as a result of medication or hospitalization if it can be determined within reasonable
1079 medical probability that without continued medication or hospitalization the defendant's mental

1080 [~~illness~~] condition will reoccur, making the defendant a substantial danger to self or others.

1081 Section 27. Section ~~77-27-2~~ is amended to read:

1082 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

1083 (1) (a) There is created the Board of Pardons and Parole.

1084 (b) The board shall consist of five full-time members and not more than five pro
1085 tempore members to be appointed by the governor with the advice and consent of the Senate in
1086 accordance with Title 63G, Chapter 24, Part 2, Vacancies, and as provided in this section.

1087 (c) The members of the board shall be resident citizens of the state.

1088 (d) The governor shall establish salaries for the members of the board within the salary
1089 range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

1090 (2) (a) (i) (A) The full-time board members shall serve terms of five years.

1091 (B) The terms of the full-time members shall be staggered so one board member is
1092 appointed for a term of five years on March 1 of each year.

1093 (ii) (A) The pro tempore members shall serve terms of five years, beginning on March
1094 1 of the year of appointment, with no more than one pro tempore member term beginning or
1095 expiring in the same calendar year.

1096 (B) If a pro tempore member vacancy occurs, the board may submit the names of not
1097 fewer than three or more than five persons to the governor for appointment to fill the vacancy.

1098 (b) All vacancies occurring on the board for any cause shall be filled by the governor
1099 with the advice and consent of the Senate in accordance with this section for the unexpired
1100 term of the vacating member.

1101 (c) The governor may at any time remove any member of the board for inefficiency,
1102 neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing

1103 (d) (i) A member of the board may not hold any other office in the government of the
1104 United States, this state or any other state, or of any county government or municipal
1105 corporation within a state.

1106 (ii) A member may not engage in any occupation or business inconsistent with the
1107 member's duties.

1108 (e) (i) A majority of the board constitutes a quorum for the transaction of business,
1109 including the holding of hearings at any time or any location within or without the state, or for
1110 the purpose of exercising any duty or authority of the board.

1111 (ii) An action is deemed the action of the board if the action is taken by a majority of
1112 the board regarding whether:

1113 (A) parole, pardon, commutation, or termination of a sentence is granted in an
1114 offender's case;

1115 (B) remission of a criminal accounts receivable, or a fines or forfeiture, is granted in an
1116 offender's case; or

1117 (C) an offender's payment schedule for a criminal accounts receivable is modified.

1118 (iii) A majority vote of the five full-time members of the board is required for adoption
1119 of rules or policies of general applicability as provided by statute.

1120 (iv) Notwithstanding Subsection (2)(e)(iii), a vacancy on the board does not impair the
1121 right of the remaining board members to exercise any duty or authority of the board as long as a
1122 majority of the board remains.

1123 (v) A board member shall comply with the conflict of interest provisions described in
1124 Title 63G, Chapter 24, Part 3, Conflicts of Interest.

1125 (f) (i) Any investigation, inquiry, or hearing that the board has authority to undertake or
1126 hold may be conducted by any board member or an examiner appointed by the board.

1127 (ii) When an action under Subsection (2)(f)(i) is approved and confirmed by the board
1128 and filed in the board's office, the action is considered to be the action of the board and has the
1129 same effect as if originally made by the board.

1130 (g) (i) When a full-time board member is absent or in other extraordinary
1131 circumstances, the chair may, as dictated by public interest and efficient administration of the
1132 board, assign a pro tempore member to act in the place of a full-time member.

1133 (ii) Pro tempore members shall receive a per diem rate of compensation as established
1134 by the Division of Finance and all actual and necessary expenses incurred in attending to
1135 official business.

1136 (h) The chair may request staff and administrative support as necessary from the
1137 department.

1138 (3) (a) Except as provided in Subsection (3)(b), the commission shall:

1139 (i) recommend five applicants to the governor for a full-time member appointment to
1140 the board; and

1141 (ii) consider applicants' knowledge of the criminal justice system, state and federal

1142 criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

1143 (b) The procedures and requirements of Subsection (3)(a) do not apply if the governor
1144 appoints a sitting board member to a new term of office.

1145 (4) (a) (i) The board shall appoint an individual to serve as the board's mental health
1146 adviser and may appoint other staff necessary to aid the board in fulfilling the board's
1147 responsibilities under [~~Title 77, Chapter 16a, Commitment and Treatment of Persons with a~~
1148 ~~Mental Illness~~] Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental
1149 Condition.

1150 (ii) The adviser shall prepare reports and recommendations to the board on all persons
1151 adjudicated as guilty with a mental [~~illness~~] condition, in accordance with [~~Title 77, Chapter~~
1152 ~~16a, Commitment and Treatment of Persons with a Mental Illness~~] Title 77, Chapter 16a,
1153 Commitment and Treatment of Individuals with a Mental Condition.

1154 (b) The mental health adviser shall possess the qualifications necessary to carry out the
1155 duties imposed by the board and may not be employed by the department or the Utah State
1156 Hospital.

1157 (i) The board may review outside employment by the mental health advisor.

1158 (ii) The board shall develop rules governing employment with entities other than the
1159 board by the mental health advisor for the purpose of prohibiting a conflict of interest.

1160 (c) The mental health adviser shall:

1161 (i) act as liaison for the board with the Department of Health and Human Services and
1162 local mental health authorities;

1163 (ii) educate the members of the board regarding the needs and special circumstances of
1164 persons with a mental [~~illness~~] condition in the criminal justice system;

1165 (iii) in cooperation with the department, monitor the status of persons in the prison
1166 who have been found guilty with a mental [~~illness~~] condition;

1167 (iv) monitor the progress of other persons under the board's jurisdiction who have a
1168 mental [~~illness~~] condition;

1169 (v) conduct hearings as necessary in the preparation of reports and recommendations;
1170 and

1171 (vi) perform other duties as assigned by the board.

1172 Section 28. Section ~~77-27-5.3~~ is amended to read:

1173 **77-27-5.3. Meritless and bad faith litigation.**

1174 (1) For purposes of this section:

1175 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
1176 guilty with a mental ~~[illness]~~ condition, no contest, and conviction of any crime or offense.

1177 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated
1178 for that crime or is being held in custody for trial or sentencing.

1179 (2) In any case filed in state or federal court in which a prisoner submits a claim that
1180 the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons
1181 and Parole and any county jail administrator may consider that finding in any early release
1182 decisions concerning the prisoner.

1183 Section 29. Section **77-27-10.5** is amended to read:

1184 **77-27-10.5. Special condition of parole -- Penalty.**

1185 (1) In accordance with Section **77-27-5**, the Board of Pardons and Parole may release
1186 the defendant on parole and as a condition of parole, the board may order the defendant to be
1187 prohibited from directly or indirectly engaging in any profit or benefit generating activity
1188 relating to the publication of facts or circumstances pertaining to the defendant's involvement
1189 in the criminal act for which the defendant is convicted.

1190 (2) The order may prohibit the defendant from contracting with any person, firm,
1191 corporation, partnership, association, or other legal entity with respect to the commission and
1192 reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article,
1193 tape recording, phonograph record, radio, or television presentations, live entertainment of any
1194 kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
1195 regarding the criminal conduct.

1196 (3) The board may order that the prohibition includes any event undertaken and
1197 experienced by the defendant while avoiding apprehension from the authorities or while facing
1198 criminal charges.

1199 (4) The board may order that any action taken by the defendant by way of execution of
1200 power of attorney, creation of corporate entities, or other action to avoid compliance with the
1201 board's order shall be grounds for revocation of parole as provided in Section **77-27-11**.

1202 (5) Adult Probation and Parole shall notify the board of any alleged violation of the
1203 board's order under this section.

- 1204 (6) The violation of the board's order shall be considered a violation of parole.
- 1205 (7) For purposes of this section:
- 1206 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
- 1207 guilty with a mental ~~[illness]~~ condition, no contest, and conviction of any crime or offense; and
- 1208 (b) "defendant" means the convicted defendant, the defendant's assignees, and
- 1209 representatives acting on the defendant's authority.

1210 Section 30. Section **77-36-1.1** is amended to read:

1211 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
1212 **offenses.**

- 1213 (1) As used in this section:
- 1214 (a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.
- 1215 (ii) "Convicted" includes:
- 1216 (A) a plea of guilty or guilty ~~[and mentally ill]~~ with a mental condition;
- 1217 (B) a plea of no contest; and
- 1218 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas
- 1219 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in
- 1220 accordance with the plea in abeyance agreement.
- 1221 (iii) "Convicted" does not include an adjudication in juvenile court.
- 1222 (b) "Criminal mischief offense" means commission or attempt to commit an offense
- 1223 under Section **76-6-106** by one cohabitant against another.
- 1224 (c) "Offense against the person" means commission or attempt to commit an offense
- 1225 under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide,
- 1226 Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital
- 1227 Mutilation, by one cohabitant against another.
- 1228 (d) "Qualifying domestic violence offense" means:
- 1229 (i) a domestic violence offense in Utah; or
- 1230 (ii) an offense in any other state, or in any district, possession, or territory of the United
- 1231 States, that would be a domestic violence offense under Utah law.
- 1232 (2) An individual who is convicted of a domestic violence offense is guilty of a class B
- 1233 misdemeanor if:
- 1234 (a) the domestic violence offense described in this Subsection (2) is designated by law

1235 as a class C misdemeanor; and

1236 (b) the individual commits or is convicted of the domestic violence offense described
1237 in this Subsection (2):

1238 (i) within 10 years after the day on which the individual is convicted of a qualifying
1239 domestic violence offense that is not a criminal mischief offense; or

1240 (ii) within five years after the day on which the individual is convicted of a criminal
1241 mischief offense.

1242 (3) An individual who is convicted of a domestic violence offense is guilty of a class A
1243 misdemeanor if:

1244 (a) the domestic violence offense described in this Subsection (3) is designated by law
1245 as a class B misdemeanor; and

1246 (b) the individual commits or is convicted of the domestic violence offense described
1247 in this Subsection (3):

1248 (i) within 10 years after the day on which the individual is convicted of a qualifying
1249 domestic violence offense that is not a criminal mischief offense; or

1250 (ii) within five years after the day on which the individual is convicted of a criminal
1251 mischief offense.

1252 (4) An individual who is convicted of a domestic violence offense is guilty of a third
1253 degree felony if:

1254 (a) the domestic violence offense described in this Subsection (4) is designated by law
1255 as a class B misdemeanor offense against the person and the individual:

1256 (i) (A) commits or is convicted of the domestic violence offense described in this
1257 Subsection (4) within 10 years after the day on which the individual is convicted of a
1258 qualifying domestic violence offense that is not a criminal mischief offense; and

1259 (B) is convicted of another qualifying domestic violence offense that is not a criminal
1260 mischief offense after the day on which the individual is convicted of the qualifying domestic
1261 violence offense described in Subsection (4)(a)(i)(A) and before the day on which the
1262 individual is convicted of the domestic violence offense described in this Subsection (4);

1263 (ii) (A) commits or is convicted of the domestic violence offense described in this
1264 Subsection (4) within five years after the day on which the individual is convicted of a criminal
1265 mischief offense; and

1266 (B) is convicted of another criminal mischief offense after the day on which the
1267 individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A)
1268 and before the day on which the individual is convicted of the domestic violence offense
1269 described in this Subsection (4); or

1270 (iii) commits or is convicted of the domestic violence offense described in this
1271 Subsection (4) within 10 years after the day on which the individual is convicted of a
1272 qualifying domestic violence offense that is not a criminal mischief offense and within five
1273 years after the day on which the individual is convicted of a criminal mischief offense; and

1274 (b) (i) the domestic violence offense described in this Subsection (4) is designated by
1275 law as a class A misdemeanor; and

1276 (ii) the individual commits or is convicted of the domestic violence offense described
1277 in this Subsection (4):

1278 (A) within 10 years after the day on which the individual is convicted of a qualifying
1279 domestic violence offense that is not a criminal mischief offense; or

1280 (B) within five years after the day on which the individual is convicted of a criminal
1281 mischief offense.

1282 Section 31. Section ~~77-38-302~~ is amended to read:

1283 **77-38-302. Definitions.**

1284 As used in this part:

1285 (1) "Convicted person" means a person who has been convicted of a crime.

1286 (2) "Conviction" means an adjudication by a federal or state court resulting from a trial
1287 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
1288 or not guilty but having a mental ~~[illness]~~ condition regardless of whether the sentence was
1289 imposed or suspended.

1290 (3) "Fund" means the Crime Victim Reparations Fund created in Section [63M-7-526](#).

1291 (4) "Memorabilia" means any tangible property of a convicted person or a
1292 representative or assignee of a convicted person, the value of which is enhanced by the
1293 notoriety gained from the criminal activity for which the person was convicted.

1294 (5) "Notoriety of crimes contract" means a contract or other agreement with a
1295 convicted person, or a representative or assignee of a convicted person, with respect to:

1296 (a) the reenactment of a crime in any manner including a movie, book, magazine

1297 article, Internet website, recording, phonograph record, radio or television presentation, or live
1298 entertainment of any kind;

1299 (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions
1300 regarding a crime involving or causing personal injury, death, or property loss as a direct result
1301 of the crime; or

1302 (c) the payment or exchange of any money or other consideration or the proceeds or
1303 profits that directly or indirectly result from the notoriety of the crime.

1304 (6) "Office" means the Utah Office for Victims of Crime.

1305 (7) "Profit" means any income or benefit:

1306 (a) over and above the fair market value of tangible property that is received upon the
1307 sale or transfer of memorabilia; or

1308 (b) any money, negotiable instruments, securities, or other consideration received or
1309 contracted for gain which is traceable to a notoriety of crimes contract.

1310 Section 32. Section **77-38b-102** is amended to read:

1311 **77-38b-102. Definitions.**

1312 As used in this chapter:

1313 (1) "Civil accounts receivable" means the same as that term is defined in Section
1314 [77-32b-102](#).

1315 (2) "Civil judgment of restitution" means the same as that term is defined in Section
1316 [77-32b-102](#).

1317 (3) (a) "Conviction" means:

1318 (i) a plea of:

1319 (A) guilty;

1320 (B) guilty with a mental ~~[illness]~~ condition; or

1321 (C) no contest; or

1322 (ii) a judgment of:

1323 (A) guilty; or

1324 (B) guilty with a mental ~~[illness]~~ condition.

1325 (b) "Conviction" does not include:

1326 (i) a plea in abeyance until a conviction is entered for the plea in abeyance;

1327 (ii) a diversion agreement; or

- 1328 (iii) an adjudication of a minor for an offense under Section [80-6-701](#).
- 1329 (4) "Criminal accounts receivable" means the same as that term is defined in Section
1330 [77-32b-102](#).
- 1331 (5) "Criminal conduct" means:
- 1332 (a) any misdemeanor or felony offense of which the defendant is convicted; or
- 1333 (b) any other criminal behavior for which the defendant admits responsibility to the
1334 sentencing court with or without an admission of committing the criminal behavior.
- 1335 (6) (a) "Defendant" means an individual who has been convicted of, or entered into a
1336 plea disposition for, criminal conduct.
- 1337 (b) "Defendant" does not include a minor, as defined in Section [80-1-102](#), who is
1338 adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6,
1339 Juvenile Justice.
- 1340 (7) "Department" means the Department of Corrections.
- 1341 (8) "Diversion agreement" means an agreement entered into by the prosecuting
1342 attorney and the defendant that suspends criminal proceedings before conviction on the
1343 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
1344 victim, or fulfill some other condition.
- 1345 (9) "Office" means the Office of State Debt Collection created in Section [63A-3-502](#).
- 1346 (10) "Party" means the prosecuting attorney, the defendant, or the department involved
1347 in a prosecution.
- 1348 (11) "Payment schedule" means the same as that term is defined in Section
1349 [77-32b-102](#).
- 1350 (12) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and
1351 expenses regardless of whether the economic injury, losses, and expenses have yet been
1352 incurred.
- 1353 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
1354 damages.
- 1355 (13) "Plea agreement" means an agreement entered between the prosecuting attorney
1356 and the defendant setting forth the special terms and conditions and criminal charges upon
1357 which the defendant will enter a plea of guilty or no contest.
- 1358 (14) "Plea disposition" means an agreement entered into between the prosecuting

1359 attorney and the defendant including a diversion agreement, a plea agreement, a plea in
1360 abeyance agreement, or any agreement by which the defendant may enter a plea in any other
1361 jurisdiction or where charges are dismissed without a plea.

1362 (15) "Plea in abeyance" means an order by a court, upon motion of the prosecuting
1363 attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but
1364 not, at that time, entering judgment of conviction against the defendant nor imposing sentence
1365 upon the defendant on condition that the defendant comply with specific conditions as set forth
1366 in a plea in abeyance agreement.

1367 (16) "Plea in abeyance agreement" means an agreement entered into between the
1368 prosecuting attorney and the defendant setting forth the specific terms and conditions upon
1369 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

1370 (17) "Restitution" means the payment of pecuniary damages to a victim.

1371 (18) (a) "Victim" means any person who has suffered pecuniary damages that are
1372 proximately caused by the criminal conduct of the defendant.

1373 (b) "Victim" includes:

1374 (i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes
1375 a payment to a victim under Section [63M-7-519](#);

1376 (ii) the estate of a deceased victim; and

1377 (iii) a parent, spouse, or sibling of a victim.

1378 (c) "Victim" does not include a codefendant or accomplice.

1379 Section 33. Section **78A-2-302** is amended to read:

1380 **78A-2-302. Indigent litigants -- Affidavit.**

1381 (1) As used in Sections [78A-2-302](#) through [78A-2-309](#):

1382 (a) "Convicted" means:

1383 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
1384 [illness] condition, no contest; and

1385 (ii) a conviction of any crime or offense.

1386 (b) "Indigent" means an individual who is financially unable to pay fees and costs or
1387 give security.

1388 (c) "Prisoner" means an individual who has been convicted of a crime and is
1389 incarcerated for that crime or is being held in custody for trial or sentencing.

1390 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
1391 state without prepayment of fees and costs or security if the individual submits an affidavit
1392 demonstrating that the individual is indigent.

1393 (3) A court shall find an individual indigent if the individual's affidavit under
1394 Subsection (2) demonstrates:

1395 (a) the individual has an income level at or below 150% of the United States poverty
1396 level as defined by the most recent poverty income guidelines published by the United States
1397 Department of Health and Human Services;

1398 (b) the individual receives benefits from a means-tested government program,
1399 including Temporary Assistance to Needy Families, Supplemental Security Income, the
1400 Supplemental Nutrition Assistance Program, or Medicaid;

1401 (c) the individual receives legal services from a nonprofit provider or a pro bono
1402 attorney through the Utah State Bar; or

1403 (d) the individual has insufficient income or other means to pay the necessary fees and
1404 costs or security without depriving the individual, or the individual's family, of food, shelter,
1405 clothing, or other necessities.

1406 (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)
1407 shall contain complete information on the individual's:

1408 (a) identity and residence;

1409 (b) amount of income, including any government financial support, alimony, or child
1410 support;

1411 (c) assets owned, including real and personal property;

1412 (d) business interests;

1413 (e) accounts receivable;

1414 (f) securities, checking and savings account balances;

1415 (g) debts; and

1416 (h) monthly expenses.

1417 (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the
1418 amount of money held in the prisoner's trust account at the time the affidavit under Subsection
1419 (2) is executed in accordance with Section [78A-2-305](#).

1420 (6) An affidavit of indigency under this section shall state the following:

1421 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
1422 the expenses of the action or legal proceedings which I am about to commence or the appeal
1423 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal
1424 proceedings, or appeal.

1425 Section 34. Section **78B-7-901** is amended to read:

1426 **78B-7-901. Definitions.**

1427 As used in this part:

1428 (1) "Conviction" means:

1429 (a) a verdict or conviction;

1430 (b) a plea of guilty or guilty [~~and mentally ill~~] with a mental condition;

1431 (c) a plea of no contest; or

1432 (d) the acceptance by the court of a plea in abeyance.

1433 (2) "Immediate family" means the same as that term is defined in Section [76-5-106.5](#).

1434 Section 35. Section **80-2-1004** is amended to read:

1435 **80-2-1004. Request for division removal of name from Licensing Information**
1436 **System -- Petition for evidentiary hearing or substantiation.**

1437 (1) Except as provided in Subsection (2), an individual whose name is listed on the
1438 Licensing Information System as of May 6, 2002, may at any time:

1439 (a) request review by the division of the individual's case and removal of the
1440 individual's name from the Licensing Information System under Subsection (3); or

1441 (b) file a petition for substantiation and a request for a finding of unsubstantiated or
1442 without merit in accordance with Section [80-3-504](#).

1443 (2) Subsection (1) does not apply to an individual who has been the subject of any of
1444 the following court determinations with respect to the alleged incident of abuse or neglect:

1445 (a) conviction;

1446 (b) adjudication under Section [80-3-402](#) or [80-6-701](#);

1447 (c) plea of guilty;

1448 (d) plea of guilty with a mental [~~illness~~] condition; or

1449 (e) no contest.

1450 (3) If an alleged perpetrator listed on the Licensing Information System before May 6,
1451 2002, requests removal of the alleged perpetrator's name from the Licensing Information

1452 System, the division shall, within 30 days after the day on which the request is made:
1453 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
1454 qualifies as:
1455 (A) a severe type of child abuse or neglect;
1456 (B) chronic abuse; or
1457 (C) chronic neglect; and
1458 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect
1459 described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from
1460 the Licensing Information System; or
1461 (b) determine whether to file a petition for substantiation in accordance with Section
1462 [80-3-504](#).

1463 Section 36. **Revisor instructions.**

1464 The Legislature intends that the Office of Legislative Research and General Counsel, in
1465 preparing the Utah Code database for publication, replace the terms "guilty with a mental
1466 illness" and "guilty and mentally ill" with "guilty with a mental condition" in any new language
1467 added to the Utah Code by legislation passed during the 2023 General Session.