

**CIVIL COMMITMENT AND COMPETENCY AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

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

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**LONG TITLE****General Description:**

This bill modifies provisions relating to involuntary commitment, commitment to assisted outpatient treatment, and competency to stand trial.

**Highlighted Provisions:**

This bill:

- ▶ defines terms and modifies definitions;
- ▶ adds members to the Forensic Mental Health Coordinating Council;
- ▶ modifies procedures and requirements for involuntary commitment of an individual, including provisions relating to:
  - notice of expiration of a court order for commitment;
  - the qualifications of an individual who may evaluate an individual for civil commitment;
  - access to medical and mental health records in commitment proceedings;
  - periodic review of an individual's commitment;
  - the circumstances under which certain individuals who are committed after or during a criminal proceeding may be discharged from commitment; and
  - the risk assessment that must be completed before certain individuals are released from civil commitment;
- ▶ clarifies that a court may order assisted outpatient treatment of an individual who does not meet the conditions for civil commitment;



- 28       ▶ modifies provisions relating to the mental health services a local mental health  
29 authority is required to provide to an individual who is under an assisted outpatient  
30 treatment order or a civil commitment order;
- 31       ▶ modifies the circumstances under which records and reports relating to an order for  
32 civil commitment or assisted outpatient treatment may be disclosed;
- 33       ▶ modifies procedures and requirements for finding a defendant incompetent to stand  
34 trial in a criminal proceeding, including provisions relating to:
- 35             • the court in which a petition to determine competency may be filed;  
36             • the information and circumstances on which the forensic evaluation of a  
37 defendant may be based;
- 38             • the number of forensic evaluators required to evaluate a defendant;  
39             • the court's findings regarding a defendant's competency; and  
40             • commitment of an incompetent defendant for restoration treatment; and
- 41       ▶ makes technical changes.

**Money Appropriated in this Bill:**

43       None

**Other Special Clauses:**

45       None

**Utah Code Sections Affected:****AMENDS:**

- 48       **17-43-301**, as last amended by Laws of Utah 2019, Chapter 256  
49       **31A-22-651**, as enacted by Laws of Utah 2019, Chapter 256  
50       **53-10-208.1**, as last amended by Laws of Utah 2019, Chapters 33 and 365  
51       **62A-15-602**, as last amended by Laws of Utah 2019, Chapters 189 and 256  
52       **62A-15-605**, as last amended by Laws of Utah 2015, Chapter 403  
53       **62A-15-626**, as last amended by Laws of Utah 2019, Chapter 419  
54       **62A-15-631**, as last amended by Laws of Utah 2019, Chapters 256 and 419  
55       **62A-15-632**, as last amended by Laws of Utah 2019, Chapter 419  
56       **62A-15-636**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
57 Chapter 8  
58       **62A-15-637**, as last amended by Laws of Utah 2019, Chapter 419

59           **62A-15-643**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
60 Chapter 8

61           **77-15-2**, as last amended by Laws of Utah 2018, Chapter 147

62           **77-15-3**, as last amended by Laws of Utah 2018, Chapter 147

63           **77-15-3.5**, as enacted by Laws of Utah 2018, Chapter 147

64           **77-15-4**, as last amended by Laws of Utah 2018, Chapter 147

65           **77-15-5**, as last amended by Laws of Utah 2018, Chapter 147

66           **77-15-6**, as last amended by Laws of Utah 2018, Chapter 147

67           **77-16a-302**, as last amended by Laws of Utah 2011, Chapter 366

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

70           Section 1. Section **17-43-301** is amended to read:

71           **17-43-301. Local mental health authorities -- Responsibilities.**

72           (1) As used in this section:

73           (a) "Assisted outpatient treatment" means the same as that term is defined in Section  
74 **62A-15-602**.

75           (b) "Crisis worker" means the same as that term is defined in Section **62A-15-1301**.

76           (c) "Local mental health crisis line" means the same as that term is defined in Section  
77 **63C-18-102**.

78           (d) "Mental health therapist" means the same as that term is defined in Section  
79 **58-60-102**.

80           (e) "Public funds" means the same as that term is defined in Section **17-43-303**.

81           (f) "Statewide mental health crisis line" means the same as that term is defined in  
82 Section **63C-18-102**.

83           (2) (a) (i) In each county operating under a county executive-council form of  
84 government under Section **17-52a-203**, the county legislative body is the local mental health  
85 authority, provided however that any contract for plan services shall be administered by the  
86 county executive.

87           (ii) In each county operating under a council-manager form of government under  
88 Section **17-52a-204**, the county manager is the local mental health authority.

89           (iii) In each county other than a county described in Subsection (2)(a)(i) or (ii), the

90 county legislative body is the local mental health authority.

91 (b) Within legislative appropriations and county matching funds required by this  
92 section, under the direction of the division, each local mental health authority shall:

93 (i) provide mental health services to individuals within the county; and

94 (ii) cooperate with efforts of the Division of Substance Abuse and Mental Health to  
95 promote integrated programs that address an individual's substance abuse, mental health, and  
96 physical healthcare needs, as described in Section [62A-15-103](#).

97 (c) Within legislative appropriations and county matching funds required by this  
98 section, each local mental health authority shall cooperate with the efforts of the Department of  
99 Human Services to promote a system of care, as defined in Section [62A-1-104](#), for minors with  
100 or at risk for complex emotional and behavioral needs, as described in Section [~~62A-1-111~~]  
101 [62A-1-104](#).

102 (3) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal  
103 Cooperation Act, two or more counties may join to:

104 (i) provide mental health prevention and treatment services; or

105 (ii) create a united local health department that combines substance abuse treatment  
106 services, mental health services, and local health department services in accordance with  
107 Subsection (4).

108 (b) The legislative bodies of counties joining to provide services may establish  
109 acceptable ways of apportioning the cost of mental health services.

110 (c) Each agreement for joint mental health services shall:

111 (i) (A) designate the treasurer of one of the participating counties or another person as  
112 the treasurer for the combined mental health authorities and as the custodian of money  
113 available for the joint services; and

114 (B) provide that the designated treasurer, or other disbursing officer authorized by the  
115 treasurer, may make payments from the money available for the joint services upon audit of the  
116 appropriate auditing officer or officers representing the participating counties;

117 (ii) provide for the appointment of an independent auditor or a county auditor of one of  
118 the participating counties as the designated auditing officer for the combined mental health  
119 authorities;

120 (iii) (A) provide for the appointment of the county or district attorney of one of the

participating counties as the designated legal officer for the combined mental health authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined mental health authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint mental health services may provide for:

(i) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

(ii) allocation of appointments of members of the mental health advisory council between or among participating counties.

(4) A county governing body may elect to combine the local mental health authority with the local substance abuse authority created in Part 2, Local Substance Abuse Authorities, and the local health department created in Title 26A, Chapter 1, Part 1, Local Health Department Act, to create a united local health department under Section 26A-1-105.5. A local mental health authority that joins with a united local health department shall comply with this part.

(5) (a) Each local mental health authority is accountable to the department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

(b) Each local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

(6) (a) Each local mental health authority shall:

(i) review and evaluate mental health needs and services, including mental health needs and services for:

(A) an individual incarcerated in a county jail or other county correctional facility;

[and]

(B) an individual who is a resident of the county and who is court ordered to receive assisted outpatient treatment under Section [62A-15-630.5](#); and

(C) an individual who is a resident of the county who is committed to the custody or jurisdiction of the local mental health authority under Section [62A-15-631](#);

(ii) in accordance with Subsection (6)(b), annually prepare and submit to the division a plan approved by the county legislative body for mental health funding and service delivery, either directly by the local mental health authority or by contract;

(iii) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(iv) appoint, directly or by contract, a full-time or part-time director for mental health programs and prescribe the director's duties;

(v) provide input and comment on new and revised rules established by the division;

(vi) establish and require contract providers to establish administrative, clinical, personnel, financial, procurement, and management policies regarding mental health services and facilities, in accordance with the rules of the division, and state and federal law;

(vii) establish mechanisms allowing for direct citizen input;

(viii) annually contract with the division to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(ix) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(x) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

(xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts, and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and

Other Local Entities Act; and

(xii) take and retain physical custody of minors committed to the physical custody of local mental health authorities by a judicial proceeding under Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(b) Each plan under Subsection (6)(a)(ii) shall include services for adults, youth, and children, which shall include:

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

(vi) psychosocial rehabilitation, including vocational training and skills development;

(vii) case management;

(viii) community supports, including in-home services, housing, family support services, and respite services;

(ix) consultation and education services, including case consultation, collaboration with other county service agencies, public education, and public information; and

(x) services to persons incarcerated in a county jail or other county correctional facility.

(7) (a) If a local mental health authority provides for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall:

(i) collaborate with the statewide mental health crisis line described in Section 62A-15-1302;

(ii) ensure that each individual who answers calls to the local mental health crisis line:

(A) is a mental health therapist or a crisis worker; and

(B) meets the standards of care and practice established by the Division of Substance Abuse and Mental Health, in accordance with Section 62A-15-1302; and

(iii) ensure that when necessary, based on the local mental health crisis line's capacity, calls are immediately routed to the statewide mental health crisis line to ensure that when an individual calls the local mental health crisis line, regardless of the time, date, or number of individuals trying to simultaneously access the local mental health crisis line, a mental health

therapist or a crisis worker answers the call without the caller first:

(A) waiting on hold; or

(B) being screened by an individual other than a mental health therapist or crisis worker.

(b) If a local mental health authority does not provide for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall use the statewide mental health crisis line as a local crisis line resource.

(8) Before disbursing any public funds, each local mental health authority shall require that each entity that receives any public funds from a local mental health authority agrees in writing that:

(a) the entity's financial records and other records relevant to the entity's performance of the services provided to the mental health authority shall be subject to examination by:

(i) the division;

(ii) the local mental health authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide mental health services under an agreement under Subsection (3), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local mental health authority; and

(c) the entity will comply with the provisions of Subsection (5)(b).

(9) A local mental health authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(10) Public funds received for the provision of services pursuant to the local mental health plan may not be used for any other purpose except those authorized in the contract between the local mental health authority and the provider for the provision of plan services.



(11) (a) A local mental health authority shall provide ~~[assisted outpatient treatment services, as described in Section 62A-15-630.4,]~~ mental health services to a resident of the county who:

(i) has been ordered under Section 62A-15-630.5 to receive assisted outpatient treatment[-]; and

(ii) is committed to the custody or jurisdiction of the local mental health authority under Section 62A-15-631.

(b) The mental health services described in Subsection (11)(a) shall include:

(i) case management; and

(ii) an individualized treatment plan created with input from the resident described in Subsection (11)(a), if possible.

(c) A court order described in Subsection (11)(a) does not authorize a local mental health authority to forcibly medicate a resident described under Subsection (11)(a).

Section 2. Section 31A-22-651 is amended to read:

**31A-22-651. Insurance coverage for assisted outpatient treatment and involuntary civil commitment.**

(1) As used in this section, "assisted outpatient treatment" means the same as that term is defined in Section 62A-15-602.

(2) A health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment, as provided in Section 62A-15-630.5, or under a court order for civil commitment, as provided in Section 62A-15-631.

Section 3. Section 53-10-208.1 is amended to read:

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

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

(a) all dispositions of criminal matters, including:

(i) guilty pleas;

(ii) convictions;

(iii) dismissals;

(iv) acquittals;

(v) pleas held in abeyance;

(vi) judgments of not guilty by reason of insanity[?];

(vii) judgments of guilty with a mental illness;

(viii) finding of mental incompetence to stand trial; and

(ix) probations granted;

(b) orders of civil commitment under the terms of Section 62A-15-631 and orders of assisted outpatient treatment under the terms of Section 62A-15-630.5;

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

(d) protective orders issued after notice and hearing, pursuant to:

(i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(iii) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; or

(iv) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.

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

(a) adjudicated as a mental defective; or

(b) involuntarily committed [~~to a mental institution~~] in accordance with [~~Subsection~~ Section 62A-15-631 ~~(+6)~~].

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

(a) an agency record identifier;

(b) the individual's name, sex, race, and date of birth; and

(c) the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

Section 4. Section 62A-15-602 is amended to read:

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

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of

Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:

(1) "Adult" means an individual 18 years ~~[of age]~~ old or older.

(2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection 62A-15-103(2)(a)(v).

(3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 62A-15-630.5.

(4) ~~["Commitment"]~~ "Committed" to the custody of a local mental health authority" means that an adult is committed to the custody or jurisdiction of the local mental health authority that governs the mental health catchment area where the adult resides or is found.

(5) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.

(6) "Designated examiner" means:

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

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

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

(8) "Discharge" means:

(a) to release an individual from the Utah State Hospital or another secure facility; or

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

~~[(8)]~~ (9) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

(10) "Forensic-track patient" means a patient who is civilly committed to a secure facility and whose civil commitment is ordered after a court:

(a) finds the patient is incompetent to proceed without a substantial probability that the patient will become competent in the foreseeable future under Section 77-15-6; or

(b) finds the patient has served the maximum term of commitment under Subsection 77-16a-302(3).

~~[(9)]~~ (11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406 (2)(a) through (l):

(a) sexual intercourse;

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

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

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

~~[(10)]~~ (12) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

~~[(11)]~~ (13) "Local substance abuse authority" means the same as that term is defined in Section 62A-15-102 and described in Section 17-43-201.

~~[(12)]~~ (14) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.

~~[(13)]~~ (15) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:

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

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

~~[(14)]~~ (16) "Mental illness" means:

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

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

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

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

~~[(15)]~~ (17) "Patient" means an individual who is:

(a) ~~[under commitment]~~ civilly committed to the custody or to the treatment services of a local mental health authority; or

(b) undergoing essential treatment and intervention.

~~[(16)]~~ (18) "Physician" means an individual who is:

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

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

(19) "Qualified examiner" means an individual licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who is qualified by training and education to conduct a risk assessment.

(20) "Qualified mental health therapist" means an individual licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:

(a) is qualified by training and education in the diagnosis of mental illness or related illnesses; and

(b) has at least five years of experience in the treatment of mental illness.

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

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

(b) whether the forensic-track patient's mental condition is likely to deteriorate if the forensic-track patient is released from a secure facility resulting in the forensic-track patient being a danger to self or others;

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

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

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

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

(g) whether a local mental health authority is able to provide appropriate treatment to

the forensic-track patient.

[(+7)] (22) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

[(+8)] (23) "Substantial danger" means that due to mental illness, an individual is at serious risk of:

- (a) suicide;
- (b) serious bodily self-injury;
- (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;
- (d) causing or attempting to cause serious bodily injury to another individual; or
- (e) engaging in harmful sexual conduct.

[(+9)] (24) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Section 5. Section **62A-15-605** is amended to read:

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

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

- (a) the director of the Division of Substance Abuse and Mental Health or the director's appointee;
- (b) the superintendent of the state hospital or the superintendent's appointee;
- (c) the executive director of the Department of Corrections or the executive director's appointee;
- (d) a member of the Board of Pardons and Parole or [its] the Board of Pardons and Parole's appointee;
- (e) the attorney general or the attorney general's appointee;
- (f) a county or district attorney or the county attorney or district attorney's appointee from:

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

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

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

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

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

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

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

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

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

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

~~[(m)]~~ (o) other individuals, including individuals from appropriate advocacy organizations with an interest in the mission described in Subsection (3), as appointed by the members described in Subsections (1)(a) through ~~[(l)]~~ (n).

(2) ~~[(A)]~~ Except for compensation or benefits provided to the member in the member's ordinary course of employment, a member who is not employed by the state may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section [63A-3-106](#);

(b) Section [63A-3-107](#); and

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

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

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

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

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

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

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

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

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

Section 6. Section **62A-15-626** is amended to read:

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

(1) (a) Subject to Subsection (1)(b), a local mental health authority or the local mental health authority's designee shall release a patient from commitment ~~[any individual who, in the opinion of the local mental health authority or the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 62A-15-631]~~ in accordance with Subsection 62A-15-631(17) and an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.

(b) A local mental health authority's inability to locate a ~~[committed individual]~~ patient may not be the basis for the ~~[individual's]~~ patient's release, unless the court orders the release of the ~~[individual]~~ patient after a hearing at which the court makes an individualized



determination that good cause exists to release the patient.

(2) A local mental health authority may conditionally release a patient to a less restrictive environment in accordance with Section 62A-15-637.

~~[(2) A local mental health authority or the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 78A-6-120, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.]~~

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

Section 7. Section **62A-15-631** is amended to read:

**62A-15-631. Civil commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Release from commitment -- Assisted outpatient treatment -- Costs.**

(1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed to the custody of a local mental health authority may initiate an involuntary commitment court proceeding by filing, in the district court in the county where the adult proposed patient resides or is found, a written application that includes:

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

(i) name;

(ii) date of birth; and

(iii) social security number;

(b) (i) a certificate of a licensed physician ~~[or]~~<sub>2</sub> a designated examiner, or a qualified mental health therapist stating that within the seven-day period immediately preceding the certification, the physician ~~[or]~~<sub>2</sub> designated examiner, or qualified mental health therapist examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed to the custody of a local mental health authority; or

(ii) a written statement by the applicant that:

(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician ~~[or]~~, designated examiner, or a qualified mental health therapist;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based; ~~[and]~~

(c) a statement whether the proposed patient has previously been under an order for commitment or an assisted outpatient treatment order, if known by the applicant~~[-]~~; and

(d) an explanation of the mental health services provided to the proposed patient under an order described in Subsection (1)(c), if known by the applicant.

(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority or the local mental health authority's designee, and the court may direct a qualified mental health ~~[professional]~~ therapist from ~~[that]~~ the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

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

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

(ii) is required if the local mental health authority or the local mental health authority's designee appears at the hearing.

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

(a) the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed

555 patient has a mental illness that poses a substantial danger to self or others requiring  
556 involuntary commitment pending examination and hearing; or

557 (b) the proposed patient refuses to submit to an interview with a mental health  
558 professional as directed by the court or go to a treatment facility voluntarily.

559 (4) (a) Notice of commencement of proceedings for involuntary commitment, setting  
560 forth the allegations of the application and any reported facts, together with a copy of any  
561 official order of detention, shall:

562 (i) be provided by the court to a proposed patient:

563 (A) before, or upon, placement in the custody of a local mental health authority under  
564 Subsection (3); or;

565 (B) with respect to any proposed patient presently ~~[in]~~ committed to the custody of a  
566 local mental health authority whose status is being changed from voluntary to involuntary,  
567 upon the filing of an application for that purpose with the court~~[- A copy of that order of~~  
568 ~~detention shall be maintained at the place of detention.];~~

569 ~~[(5) Notice of commencement of those proceedings shall]~~

570 (ii) be provided by the court as soon as practicable to the applicant, any legal guardian,  
571 any immediate adult family members, legal counsel for the parties involved, the local mental  
572 health authority or ~~[its]~~ the local mental health authority's designee, and any other persons  
573 whom the proposed patient or the court shall designate~~[- That notice shall]; and~~

574 (iii) advise ~~[those persons]~~ that a hearing may be held within the time provided by law.  
575 ~~[If]~~

576 (b) A copy of the order of detention shall be maintained at the proposed patient's place  
577 of detention.

578 (c) The court shall determine the extent of the notice if the proposed patient has refused  
579 to permit release of information necessary for provisions of notice under this ~~[subsection, the~~  
580 ~~extent of notice shall be determined by the court]~~ Subsection (4).

581 ~~[(6)]~~ (5) Proceedings for commitment of an individual under the age of 18 years to a  
582 local mental health authority may be commenced in accordance with Part 7, Commitment of  
583 Persons Under Age 18 to Division of Substance Abuse and Mental Health.

584 ~~[(7)]~~ (6) The district court may, in ~~[its]~~ the district court's discretion, transfer the case  
585 to any other district court within this state, provided that the transfer will not be adverse to the

interest of the proposed patient.

~~[(8)]~~ (7) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, ~~[of]~~ after the ~~[issuance of]~~ day on which the court issues a judicial order, or after ~~[commitment of]~~ the day on which a proposed patient is committed to the custody of a local mental health authority or ~~[its]~~ the local mental health authority's designee under ~~[court order for detention or examination]~~ Subsection (3), the court shall appoint two designated examiners:

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

(b) one of whom is a licensed physician or qualified mental health therapist; and

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

~~[(9)]~~ (8) The court shall schedule a hearing to be held within 10 ~~[calendar]~~ days ~~[of]~~ after the day on which the designated examiners are appointed.

~~[(10)]~~ (9) (a) The designated examiners shall:

~~[(a)]~~ (i) conduct their examinations separately;

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

~~[(c)]~~ (iii) inform the proposed patient, if not represented by an attorney:

~~[(i)]~~ (A) that the proposed patient does not have to say anything;

~~[(ii)]~~ (B) of the nature and reasons for the examination;

~~[(iii)]~~ (C) that the examination was ordered by the court;

~~[(iv)]~~ (D) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;

~~[(v)]~~ (E) that findings resulting from the examination will be made available to the court; and

~~[(vi)]~~ (F) that the designated examiner may, under court order, obtain the proposed patient's mental health records; and

~~[(d)]~~ (iv) within 24 hours ~~[of]~~ after examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable treatment programs

617 available to the proposed patient without court proceedings.

618 (b) If the designated examiner reports orally, the designated examiner shall  
619 immediately send a written report to the clerk of the court.

620 ~~[(11)]~~ (10) If a designated examiner is unable to complete an examination on the first  
621 attempt because the proposed patient refuses to submit to the examination, the court shall fix a  
622 reasonable compensation to be paid to the examiner.

623 ~~[(12)]~~ (11) If the local mental health authority, ~~[its]~~ the local mental health authority's  
624 designee, or a ~~[medical]~~ designated examiner determines before the court hearing that the  
625 conditions justifying the findings leading to a commitment hearing no longer exist, the local  
626 mental health authority, ~~[its]~~ the local mental health authority's designee, or the ~~[medical]~~  
627 designated examiner shall immediately report ~~[that]~~ the determination to the court.

628 ~~[(13)]~~ (12) The court may terminate the proceedings and dismiss the application at any  
629 time, including ~~[prior to the hearing]~~ before the day on which the hearing is held, if ~~[the]~~ both  
630 designated examiners or the local mental health authority or ~~[its]~~ the local mental health  
631 authority's designee informs the court that the proposed patient:

632 (a) is not mentally ill;

633 (b) has agreed to voluntary commitment, as described in Section [62A-15-625](#); or

634 (c) has acceptable options for treatment programs that are available without court  
635 proceedings.

636 ~~[(14)]~~ (13) (a) Before the hearing, the court shall afford the proposed patient an  
637 opportunity to be represented by counsel ~~[shall be afforded to the proposed patient]~~, and if  
638 neither the proposed patient nor others provide counsel, the court shall appoint counsel and  
639 allow counsel sufficient time to consult with the proposed patient before the hearing.

640 (b) In the case of an indigent proposed patient, the county in which the proposed  
641 patient resides or is found shall make payment of reasonable attorney fees for counsel, as  
642 determined by the court~~[, shall be made by the county in which the proposed patient resides or~~  
643 ~~is found]~~.

644 ~~[(15)-(a)]~~ (14) (a) (i) The court shall afford a proposed patient, the applicant, and all  
645 other persons to whom notice is required to be given ~~[shall be afforded]~~ an opportunity to  
646 appear at the hearing, to testify, and to present and cross-examine witnesses.

647 (ii) The court may, in ~~[its]~~ the court's discretion, receive the testimony of any other

interested person.

(iii) The court may allow a waiver of the proposed patient's right to appear only for an individualized showing of good cause ~~[shown]~~, and that cause shall be made a matter of court record.

(b) The court is authorized to exclude all ~~[persons]~~ individuals not necessary for the conduct of the proceedings and may, upon motion of counsel for the proposed patient or upon request by the local mental health authority or the local mental health authority's designee, require the testimony of each examiner to be given out of the presence of any other examiners.

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

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

(e) (i) A local mental health authority ~~[or its]~~, the local mental health authority's designee, the applicant, or the physician or qualified mental health therapist in charge of the proposed patient's ~~[care]~~ treatment shall, at the time of the hearing, provide the court with the following information, if known or available:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes;

(G) medication records pertaining to the current commitment; ~~[and]~~

(H) whether the proposed patient has previously been ~~[civilly committed or]~~ under an order for commitment or an order for assisted outpatient treatment[-]; and

(I) an explanation of the mental health services provided to the proposed patient under an order described in Subsection (14)(e)(i)(H).

(ii) (A) Subject to the requirements of HIPAA, as defined in Section 26-18-17, the court may, on a showing of good cause, issue a subpoena for medical or mental health records

of a proposed patient that are not provided under Subsection (14)(e)(i).

(B) Good cause exists under Subsection (14)(e)(ii)(A) if the court finds additional medical or mental health records are necessary for the court to determine whether commitment of the proposed patient is justified.

(C) The court may issue a protective order limiting a person from producing or sharing the information in the medical or mental health records and limiting the use of the records to purposes related to the commitment proceedings for the proposed patient.

~~[(i)]~~ (iii) ~~[That]~~ The information described in Subsections (14)(e)(i) and (ii) shall  
~~[also] be [supplied]~~ provided to the proposed patient's counsel;

(A) at the time of the hearing~~[-];~~ and

(B) at any time ~~[prior to]~~ before the hearing upon request.

~~[(16)]~~ (15) (a) The court shall order [commitment of a] an adult proposed patient [who is 18 years of age or older to] be committed to the custody of a local mental health authority if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:

~~[(a)]~~ (i) the proposed patient has a mental illness;

~~[(b)]~~ (ii) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;

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

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

~~[(e)]~~ (v) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs. [In the absence of the required findings of the court after the hearing, the court shall dismiss the proceedings.]

(b) (i) If, at the hearing described in Subsection (15)(a), the court determines that the proposed patient has a mental illness but does not meet the other conditions described in Subsection (15)(a), the court may consider whether the proposed patient meets the conditions for assisted outpatient treatment under Subsection 62A-15-630.5(14).

(ii) The court shall order the proposed patient receive assisted outpatient treatment if, at the hearing described in Subsection (15)(a), the court finds the proposed patient meets the conditions for assisted outpatient treatment under Subsection 62A-15-630.5(14).

(16) If the court determines that neither the conditions for commitment under Subsection (15)(a) or assisted outpatient treatment under Subsection (14) are met, the court shall dismiss the proceedings after the hearing described in Subsection (15)(a).

(17) (a) (i) The order of commitment shall designate the period for which the patient shall be treated.

(ii) When the patient is not under an order of commitment at the time of the hearing, ~~[that]~~ the period for which the patient shall be treated may not exceed six months without ~~[benefit of]~~ a review hearing.

(iii) Upon ~~[such]~~ a review hearing, ~~[to be]~~ commenced ~~[prior to the expiration of the previous order]~~ before the day on which the previous order expires, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions described in Subsection ~~(16)~~ (15)(a) will last for an indeterminate period.

(b) The court shall:

(i) maintain a current list of all patients under ~~[its]~~ the court's order of commitment~~[-~~ That list shall be reviewed];

(ii) review the list to determine those patients who have been under an order of commitment for the designated period~~[-~~ At least two weeks prior to the expiration of the]; and

(iii) at least 30 days before the day on which the designated period of any order of commitment ~~[still in effect]~~ expires, ~~[the court that entered the original order shall]~~ inform the appropriate local mental health authority or ~~[its]~~ the local mental health authority's designee of the expiration.

(c) (i) The local mental health authority or ~~[its]~~ the local mental health authority's designee that is responsible for a patient under an order of commitment for a designated period of time shall ~~[immediately reexamine]~~ examine the reasons upon which the order of commitment was based~~[-~~ If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report the discharge to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8)



through (14).] in accordance with Section 62A-15-636 and immediately upon receiving the information described in Subsection (17)(b)(ii).

(ii) The local mental health authority or the local mental health authority's designee responsible for a patient under an order of commitment for an indeterminate period shall examine the reasons upon which the order of commitment was based in accordance with Section 62A-15-636 and at least every six months.

~~[(c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).]~~

(d) (i) If, after examination, the local mental health authority or the local mental health authority's designee determines that continued commitment of a patient is justified, the local mental health authority or the local mental health authority's designee shall send a written report of the determination to the court that issued the original order of commitment.

(ii) The local mental health authority or the local mental health authority's designee shall notify, in writing, the patient and all counsel of record:

(A) of the reasons for the determination under Subsection (17)(d)(i); and

(B) that the patient may request a review hearing by making a request to the court.

(iii) Upon receipt of the request described in Subsection (17)(d)(ii)(B), the court shall immediately:

(A) appoint two designated examiners; and

(B) proceed in accordance with Subsections (7) through (13).

(e) If the local mental health authority or the local mental health authority's designee determines after examination of a patient that the conditions justifying commitment of the patient no longer exist, the local mental health authority or the local mental health authority's designee shall release the patient from custody or jurisdiction of the local mental health authority and immediately report the release to the court.

(f) (i) If the local mental health authority or the local mental health authority's designee determines after examination of a forensic-track patient that the forensic-track patient will be eligible for discharge at a future date, the local mental health authority or the local mental health authority's designee shall notify the following persons that the forensic-track patient will be discharged at least 60 days before the day on which the local mental health authority or the local mental health authority's designee authorizes the forensic-track patient will be discharged:

(A) the court that adjudicated the forensic-track patient incompetent to proceed or not guilty by reason of insanity;

(B) the court that originally ordered the forensic-track patient be civilly committed; and

(C) all counsel of record in the cases described in Subsections (17)(f)(i)(A) and (B).

(ii) (A) After receiving the notice described in Subsection (17)(f)(i), the court or counsel of record may request a risk assessment of the forensic-track patient be completed by a designated examiner or a qualified examiner at the court or counsel's expense.

(B) If the court or counsel of record requests a risk assessment of the forensic-track patient, the court or counsel shall, within 15 days after the day on which the court or counsel receives the notice described in Subsection (17)(f)(i), notify all other persons described in Subsection (17)(f)(i) of the request.

(iii) (A) The designated examiner or a qualified examiner shall complete the risk assessment and submit the risk assessment to the court or counsel who requested the risk assessment within 30 days after the day on which the designated examiner or other qualified examiner is retained by the court or counsel of record.

(B) The risk assessment described in Subsection (17)(f)(iii)(A) shall include the designated examiner's or qualified examiner's name and qualifications, a brief summary of all data and other information the designated examiner or qualified examiner relied upon in completing the risk assessment, and the compensation to be paid to the designated examiner or qualified examiner for the risk assessment.

(iv) After receiving the risk assessment, the court or counsel of record shall:

(A) immediately notify the persons described in Subsection (17)(f)(i) of receipt of the risk assessment; and

(B) provide each of the persons described in Subsection (17)(f)(i) a copy of the risk assessment.

(v) (A) The court shall conduct a hearing on the issue of discharge of the forensic-track patient within 15 days after the day on which the court receives a copy of the risk assessment.

(B) The court may reschedule the hearing for good cause if the rescheduling does not unreasonably extend the forensic-track patient's anticipated date of discharge.

(vi) (A) If, after the hearing described in Subsection (17)(f)(v), the court determines that the conditions justifying commitment of the forensic-track patient no longer exist, the court shall order the forensic-track patient be discharged.

(B) If, after the hearing described in Subsection (17)(f)(v), the court determines that the conditions justifying commitment of the forensic-track patient will not exist on the forensic-track patient's anticipated date of discharge, the court shall order the forensic-track patient be discharged on the forensic-track patient's anticipated date of discharge.

(C) If, after the hearing described in Subsection (17)(f)(v), the court determines that commitment of the forensic-track patient is justified, the court shall order the commitment continue in accordance with Subsection (17)(a).

(vii) (A) If counsel of record for a forensic-track patient does not enter a renewed appearance within 10 days after the day on which the notice described in Subsection (17)(f)(i) is sent, the court shall appoint counsel for the forensic-track patient in accordance with Subsection (13).

(B) For purposes of Subsections (17)(f)(ii) through (vi), counsel appointed under Subsection (17)(f)(vii)(A) is deemed to have received the notice described in Subsection (17)(f)(i) on the day on which the counsel is appointed by the court.

(viii) The process described in this Subsection (17)(f):

(A) may not delay a forensic-track patient's anticipated date of discharge under Subsection (17)(f)(i); or

(B) prohibit a forensic-track patient's release under Subsection (17)(e).

(18) (a) Any patient committed as a result of an original hearing or a patient's legally

designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days ~~[of the entry of the court order]~~ after the day on which the court enters the order.

(b) The petition described in Subsection (18)(a) must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient.

(c) The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

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

(20) As provided in Section 31A-22-651, a health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for civil commitment.

Section 8. Section **62A-15-632** is amended to read:

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

(1) After an individual is involuntarily committed to the custody of a local mental health authority under Subsection ~~62A-15-631~~~~(+6)~~~~(15)(a)~~, the conditions justifying commitment under ~~[that subsection]~~ Subsection 62A-15-631(15)(a) shall be considered to continue to exist, for purposes of continued treatment under Subsection ~~62A-15-631~~(17) or conditional release to a less restrictive environment under Section ~~62A-15-637~~, unless:

(a) the court terminates the civil commitment through a review hearing; or

(b) the local mental health authority or a designee of the local mental health authority with custody over the patient ~~[discharges]~~ releases the patient and provides notice of the ~~[discharge]~~ release to the court, as described in ~~[Subsections 62A-15-631(17)(c) and 62A-15-637(2)]~~ Subsection 62A-15-631(17)(e).

(2) A patient whose treatment is continued or who is conditionally released to a less restrictive environment under Section ~~62A-15-637~~ shall be maintained in the least restrictive environment available that can provide the patient with the treatment that is adequate and appropriate.

(3) Except for on an individualized showing of good cause, a court may not terminate a civil commitment through a review hearing if the patient:

- (a) is under a conditional release agreement; and
- (b) does not appear at the review hearing.

Section 9. Section **62A-15-636** is amended to read:

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

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

(2) A local mental health authority or the local mental health authority's designee shall proceed in accordance with Subsection [62A-15-631](#) (17) if the local mental health authority or the local mental health authority's designee:

- (a) determines after examination that the conditions justifying a patient's commitment no longer exist; or
- (b) anticipates after examination that a forensic-track patient will be eligible for discharge at a future date.

Section 10. Section **62A-15-637** is amended to read:

**62A-15-637. Release of patient to receive other treatment -- Placement in more or less restrictive environment -- Procedures.**

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

- (a) the authority specifies the less restrictive treatment; and
- (b) the patient agrees in writing to the less restrictive [treatment] environment.

~~[(2) (a) Whenever a local mental health authority or a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the local mental health authority or the designee shall discharge the patient.]~~

~~[(b) If the discharged patient has been committed through judicial proceedings, the~~

local mental health authority or the designee shall prepare a report describing the determination and shall send the report to the clerk of the court where the proceedings were held.]

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

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

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

(b) An order for a more restrictive environment shall:

(i) state the reasons for the order;

(ii) authorize any peace officer to take the patient into physical custody and transport the patient to a facility designated by the local mental health authority;

(iii) inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures described in Subsection 62A-15-631[(14)](13); and

(iv) [prior to] before or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued conditional release from inpatient care, [copies of the order shall] be delivered to:

(A) the patient;

(B) the person in whose care the patient is placed;

(C) the patient's counsel of record; and

(D) the court that entered the original order of commitment.

(c) (i) If the patient ~~was~~ is in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or the patient's representative may request a hearing within 30 days ~~[of the change]~~ after the day on which the change is made.

(ii) Upon receiving the request described in Subsection (2)(c)(i), the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-15-631, with the exception of Subsection 62A-15-631[(16)](15), unless, by the time set for the hearing, the patient is returned to the less restrictive environment or the patient withdraws the request

for a hearing, in writing.

(d) The court shall:

(i) make findings regarding whether the conditions described in Subsections [(3)] (2)(a) and (b) were met and whether the patient is in the least restrictive environment that is appropriate for the patient's needs; and

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

[(4)] (3) ~~[Nothing contained in this]~~ This section ~~[prevents]~~ does not prevent a local mental health authority or ~~[its]~~ the local mental health authority's designee~~[, pursuant to Section 62A-15-636,]~~ from releasing or discharging a patient from commitment ~~[or]~~ in accordance with Section 62A-15-631 or from placing a patient in an environment that is less restrictive than that ordered by the court.

Section 11. Section **62A-15-643** is amended to read:

**62A-15-643. Confidentiality of information and records -- Exceptions -- Penalty.**

(1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for ~~[involuntary]~~ civil commitment, that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person ~~[except insofar as]~~ unless:

(a) the individual identified or ~~[his]~~ the individual's legal guardian, if any, or, if a minor, ~~[his]~~ the individual's parent or legal guardian ~~[shall consent]~~, consents to disclosure;

(b) disclosure may be necessary to ~~[carry out the provisions of]~~:

(i) carry out the provisions of this part~~;~~ ~~[or (ii)]~~ or Section 53-10-208.1; or

(ii) assist a mental health officer or peace officer to locate and transport to a treatment facility or behavioral health receiving center an individual who:

(A) is under a court order for civil commitment or assisted outpatient treatment;

(B) has missed two or more court-ordered review hearings relating to the order described in Subsection (1)(a)(ii)(A); and

(C) if untreated, is likely to experience deterioration in a mental condition that results in the individual being a danger to self or others; or

(c) a court ~~[may direct, upon its]~~ directs disclosure, upon the court's determination that disclosure is necessary for the conduct of proceedings before ~~[it,]~~ the court and that failure to make the disclosure would be contrary to the public interest.

(2) A person who knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Section 12. Section **77-15-2** is amended to read:

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

~~[(5)]~~ (6) "Incompetent to proceed" means that a defendant is not competent to stand trial as a result of a mental illness, intellectual disability, brain injury, or a related condition.

(7) "Intellectual disability" means the same as that term is defined in Section [78A-6-105](#).



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

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

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

(a) competent to stand trial;

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

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

(11) "Related condition" means the same as that term is defined in Section [78A-6-105](#).

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

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

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

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

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

Section 13. Section **77-15-3** is amended to read:

**77-15-3. Petition for inquiry regarding defendant -- Filing -- Contents.**

(1) When a defendant charged with a public offense ~~[or serving a sentence of imprisonment is]~~ may be incompetent to proceed, ~~[an individual described in Subsection (2)(b) may file a petition]~~ a petition shall be filed in the district court of the county where the charge is pending ~~[or where the defendant is confined]~~.

(2) (a) The petition shall contain:

(i) a certificate that ~~[(it)]~~ the petition is filed in good faith and on reasonable grounds to believe the defendant is incompetent to proceed~~[- The petition shall contain]; and~~

(ii) a recital of the facts, observations, and conversations with the defendant that have formed the basis for the petition.

(b) If filed by defense counsel, the petition may not disclose information in violation of the attorney-client privilege.

[~~(b)~~] (c) The petition may be based upon knowledge or information and belief and may be filed by the defendant, any person acting on behalf of the defendant, the prosecuting attorney, or any person having custody or supervision over the defendant.

Section 14. Section **77-15-3.5** is amended to read:

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

(1) When a defendant charged with a misdemeanor [~~is~~] may be incompetent to proceed, a petition [~~may~~] shall be filed [~~in the district court of the county where the charge is pending or where the defendant is confined~~] in accordance with Section 77-15-3.

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

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

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

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

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

(b) more than [~~60~~] 30 days have passed after the day on which the court adjudicated the defendant incompetent to proceed; and

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

(4) A court may dismiss the charges against a defendant who [~~was~~] is released under Subsection (3).

Section 15. Section **77-15-4** is amended to read:

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

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

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

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

(b) make a finding regarding whether there is a bona fide doubt as to the defendant's

competency to stand trial.

Section 16. Section 77-15-5 is amended to read:

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

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

(a) a petition is filed under Section 77-15-3 or 77-15-3.5; or

(b) the court:

(i) raises the issue of the defendant's competency under Section 77-15-4[-]; and

(ii) makes a finding that there is a bona fide doubt as to the defendant's competency to stand trial under Section 77-15-4.

(2) The court in which the petition described in Subsection (1)(a) is filed:

(a) shall inform the court in which criminal proceedings are pending of the petition, if the petition is not filed in the court in which criminal proceedings are pending;

(b) shall review the allegations of incompetency;

(c) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition, if the court finds the petition is not clearly sufficient on [its] the petition's face;

(d) shall hold a hearing, if the petition is opposed by either party; and

(e) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial[~~;~~and].

(3) The parties' stipulation to a bona fide doubt about the defendant's competency to stand trial may not take the place of a petition under this section.

~~[(f)]~~ (4) (a) ~~[if]~~ If the court finds that ~~[the allegations raise]~~ there is a bona fide doubt as to the defendant's competency to stand trial, the court shall order~~[-(i)]~~ the department to have [the defendant evaluated by] one or two forensic evaluators complete a competency evaluation for the defendant in accordance with Subsection (4)(b).

(b) The court shall order the department to have the defendant evaluated by one forensic evaluator~~[-, if: (A) the most severe charge against the defendant is a misdemeanor; or]~~ unless:

~~[(B) the defendant is charged with a felony but is not charged with a capital felony, and~~

the court determines, based upon the allegations in the petition, that a second competency evaluation is not necessary;]

~~[(ii) the department to have the defendant evaluated by two forensic evaluators, if:]~~

~~[(A)]~~ (i) the defendant is charged with a capital felony; or

~~[(B)]~~ (ii) the defendant is charged with a felony ~~[but is not charged with]~~ that is not a capital felony, and the court determines, based upon the allegations in the petition, that good cause exists to order a second competency evaluation ~~[is necessary; and]~~.

~~[(iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a party, who shall:]~~

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

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

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

(ii) If a party seeks an additional competency evaluation under this Subsection (4)(c), the party shall:

(A) select the additional forensic evaluator; and

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

(d) The parties' stipulation to a bona fide doubt about the defendant's competency to stand trial may not take the place of a competency evaluation ordered under this Subsection (4).

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

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

(c) For purposes of a competency evaluation, a ~~[court may order that custodians]~~ custodian of mental health records pertaining to the defendant ~~[provide those records]~~.

1113 including the defendant's prior mental health evaluations or records relating to the defendant's  
 1114 substance use disorder, may provide the records to:

1115 (i) with the defendant's consent, [to] a forensic evaluator [without the need for consent  
 1116 of the defendant.] or the department upon the department's request; or

1117 (ii) a forensic evaluator by court order.

1118 (d) A court order under Subsection (5)(c) shall include a protective order that expires  
 1119 30 days after the day on which:

1120 (i) the defendant is found guilty;

1121 (ii) the defendant enters a guilty plea; or

1122 (iii) the court sentences the defendant.

1123 (e) Except as provided in Subsection (5)(f), the court shall order the forensic evaluator  
 1124 to destroy all records subject to a protective order within the 30-day period described in  
 1125 Subsection (5)(d).

1126 (f) The court may extend the protective order described in Subsection (5)(d) if:

1127 (i) (A) the court finds the defendant is incompetent to proceed with a substantial  
 1128 probability that the defendant will become competent in the foreseeable future;

1129 (B) the court commits the individual to the department for restoration treatment; and

1130 (C) the court orders the records be maintained and used by the department only for  
 1131 purposes of the defendant's restoration treatment; or

1132 (ii) (A) the court finds the defendant incompetent to proceed without a substantial  
 1133 probability that the defendant will become competent in the foreseeable future;

1134 (B) the prosecutor or another individual indicates to the court that the prosecutor or  
 1135 individual will seek civil commitment of the defendant under Section 77-15-6; and

1136 (C) the court orders the records be maintained and used only for purposes of examining  
 1137 the defendant in connection with a petition for civil commitment.

1138 ~~[(d)]~~ (g) An order for a competency evaluation may not contain an order for any other  
 1139 inquiry into the mental state of the defendant that is not described in Subsection (5)(a).

1140 ~~[(4)]~~ (6) Pending a competency evaluation, unless the court or the department directs  
 1141 otherwise, the defendant shall be retained in the same custody or status that the defendant was  
 1142 in at the time the ~~[examination]~~ competency evaluation was ordered.

1143 ~~[(5)]~~ (7) In the conduct of a competency evaluation~~[, a progress toward competency~~

1144 ~~evaluation,~~] and in a report to the court, [a] the forensic evaluator shall consider and address, in  
1145 addition to any other factors determined to be relevant by the forensic evaluator:

1146 (a) the defendant's present ability to:

1147 (i) rationally and factually understand the criminal proceedings against the defendant;

1148 (ii) consult with the defendant's legal counsel with a reasonable degree of rational  
1149 understanding in order to assist in the defense;

1150 (iii) understand the charges or allegations against the defendant;

1151 (iv) communicate facts, events, and states of mind;

1152 (v) understand the range of possible penalties associated with the charges or allegations  
1153 against the defendant;

1154 (vi) engage in reasoned choice of legal strategies and options;

1155 (vii) understand the adversarial nature of the proceedings against the defendant;

1156 (viii) manifest behavior sufficient to allow the court to proceed; and

1157 (ix) testify relevantly, if applicable;

1158 (b) the impact of [~~the~~] a mental [~~disorder or~~] illness, intellectual disability, brain injury,  
1159 or related condition, if any, on the nature and quality of the defendant's relationship with  
1160 counsel;

1161 (c) if psychoactive medication is currently being administered:

1162 (i) whether the medication is necessary to maintain the defendant's competency; and

1163 (ii) whether the medication may have an effect on the defendant's demeanor, affect, and  
1164 ability to participate in the proceedings; and

1165 (d) whether the defendant is exhibiting false or exaggerated physical or psychological  
1166 symptoms relevant to the defendant's capacity to stand trial.

1167 [~~(6)~~] (8) If the forensic evaluator's opinion is that the defendant is incompetent to  
1168 proceed, the forensic evaluator shall indicate in the report to the court:

1169 (a) the factors that contribute to the defendant's incompetency, including the nature of  
1170 the defendant's mental [~~disorder or~~] illness, intellectual [~~or developmental~~] disability, brain  
1171 injury, or related condition, if any, and its relationship to the factors contributing to the  
1172 defendant's incompetency; and

1173 (b) whether there is a substantial probability that restoration treatment [~~may~~] will, in  
1174 the foreseeable future, bring the defendant to competency to stand trial, or that the defendant

1175 cannot become competent to stand trial in the foreseeable future.

1176 ~~[(7)]~~ (9) (a) A forensic evaluator shall provide an initial report to the court and the  
 1177 prosecuting and defense attorneys within 30 days ~~[of the receipt of the court's order. The~~  
 1178 ~~report]~~ after the day on which the forensic evaluator receives the court's order, which shall  
 1179 inform the court of the examiner's opinion concerning the competency of the defendant to stand  
 1180 trial.

1181 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in  
 1182 Subsection ~~[(7)]~~ (9)(a), the forensic evaluator shall give written notice to the court.

1183 (ii) A forensic evaluator who provides the notice described in Subsection ~~[(7)]~~ (9)(b)(i)  
 1184 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day  
 1185 on which the forensic evaluator received the court's order to conduct a competency evaluation  
 1186 and file a report.

1187 (iii) The court may further extend the deadline for completion of the evaluation and  
 1188 report if the court determines that there is good cause for the extension.

1189 (iv) Upon receipt of an extension described in Subsection ~~[(7)]~~ (9)(b)(iii), the forensic  
 1190 evaluator shall file the report as soon as reasonably possible.

1191 ~~[(8)]~~ (10) Any written report submitted by a forensic evaluator shall:

1192 (a) identify the case ordered for evaluation by the case number;

1193 (b) state the forensic evaluator's name and qualifications;

1194 ~~[(b)]~~ (c) describe the procedures, techniques, and tests used in the examination [and],  
 1195 the purpose [or purposes] for each, and the time spent by the forensic evaluator with the  
 1196 defendant for purposes of the examination;

1197 ~~[(c)]~~ (d) state the forensic evaluator's clinical observations, findings, and opinions on  
 1198 each [issue referred for examination by the court, and indicate specifically those issues, if any,  
 1199 on which the forensic evaluator could not give an opinion; and] factor described in Subsections  
 1200 (7)(a) and (b);

1201 ~~[(d)]~~ (e) identify the sources of information used by the forensic evaluator and present  
 1202 the basis for the forensic evaluator's clinical findings and opinions[-]; and

1203 (f) state the compensation to be paid to the forensic evaluator for the report.

1204 ~~[(9)]~~ (11) (a) Any statement made by the defendant in the course of any competency  
 1205 examination, whether the examination is with or without the consent of the defendant, any

testimony by a forensic evaluator based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence[~~-. The evidence may be admitted, however, where~~] unless the evidence is relevant to a determination of the defendant's competency.

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

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

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

(c) (i) The court may call any forensic evaluator to testify at the hearing who is not called by the parties.

(ii) If the court calls a forensic evaluator to testify, counsel for the parties may cross-examine the forensic evaluator.

(d) (i) If the forensic evaluators are in conflict as to the competency of the defendant, all forensic evaluators should be called to testify at the hearing if reasonably available.

(ii) A conflict in the opinions of the forensic evaluators does not require the appointment of an additional forensic evaluator unless the court ~~[determines]~~ finds good cause for the appointment ~~[to be necessary]~~.

~~[(11)]~~ (13) (a) (i) A defendant shall be presumed competent to stand trial unless the court, by a preponderance of the evidence, finds the defendant incompetent to proceed.

(ii) The burden of proof is upon the proponent of incompetency at the hearing.

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

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



1237           ~~[(13)]~~ (15) If the court finds the defendant incompetent to proceed:

1238           (a) the court shall issue the order ~~[described in]~~ in accordance with Subsection

1239 77-15-6(1), which shall:

1240           (i) include findings addressing each of the factors in Subsection ~~[(5)]~~ (7)(a);

1241           (ii) include a transportation order, if necessary;

1242           (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological,

1243 or social work reports submitted to the court relative to the mental condition of the defendant,

1244 and any other documents made available to the court by either the defense or the prosecution,

1245 pertaining to the defendant's current or past mental condition; and

1246           (iv) be sent by the court to the department; and

1247           (b) the prosecuting attorney shall provide to the department:

1248           (i) the charging document and probable cause statement, if any;

1249           (ii) arrest or incident reports prepared by law enforcement and pertaining to the

1250 charged offense; and

1251           (iii) additional supporting documents.

1252           ~~[(14)]~~ (16) The court may make any reasonable order to ensure compliance with this

1253 section.

1254           ~~[(15)]~~ (17) Failure to comply with this section does not result in the dismissal of

1255 criminal charges.

1256           Section 17. Section **77-15-6** is amended to read:

1257           **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**

1258 **hearings -- Notice to prosecuting attorneys.**

1259           (1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant

1260 ~~[to be]~~ incompetent to proceed, the court shall ~~[order the defendant committed to the~~

1261 ~~department for restoration treatment.]~~ determine, by a preponderance of the evidence, whether

1262 the defendant is:

1263           (i) incompetent to proceed, with a substantial probability that the defendant will

1264 become competent in the foreseeable future; or

1265           (ii) incompetent to proceed, without a substantial probability that the defendant will

1266 become competent in the foreseeable future.

1267           (b) (i) If the court finds a defendant is incompetent to proceed under Subsection

(1)(a)(i), the court shall order the defendant be committed to the department for restoration treatment.

(ii) If the court finds a defendant is incompetent to proceed under Subsection (1)(a)(ii), the court shall proceed in accordance with Subsections (7) through (12).

~~[(b)]~~ (c) (i) (A) Except as provided in Subsection (1)(c)(i)(B), the ~~[The]~~ court may recommend but may not order placement of ~~[the]~~ a defendant~~[-The]~~ who is found incompetent to proceed under Subsection (1)(a)(i).

(B) The court may~~[-however,]~~ order that the defendant be placed in a secure setting rather than a nonsecure setting.

(ii) Following restoration screening, the department's designee shall designate and inform the court of the specific placement and restoration treatment program for the defendant.

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

(i) restore the ~~[individual]~~ defendant to competency; or

(ii) determine whether the ~~[individual]~~ defendant can be restored to competency in the foreseeable future.

~~[(d)]~~ (e) A defendant whom a court determines is incompetent to proceed under Subsection (1)(a)(i) may not be held for restoration treatment longer than:

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

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

(2) (a) A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation, by:

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

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

(b) (i) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives the commitment order from the department.

(ii) If the forensic evaluator is unable to complete the report within the 90 ~~[days]~~ day

period described in Subsection (2)(b)(i), the forensic evaluator shall provide to the court and counsel a summary progress statement that informs the court that additional time is necessary to complete the report, in which case the examiner shall have up to an additional 45 days to provide the full report.

(c) The report shall:

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

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

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

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

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

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

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

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

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

~~[(viii)]~~ (v) assess ~~[the likelihood of restoration to competency;]~~ the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved[-]; and

(vi) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms and state the evaluator's opinion on the impact of any false or exaggerated symptoms on the defendant's competency to stand trial.

(3) (a) The court on ~~[its]~~ the court's own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward

competency evaluation.

(b) If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.

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

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

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

~~(a)~~ (i) competent to stand trial;

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

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

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

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

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

(b) If the court determines that the defendant is ~~not competent~~ incompetent to proceed ~~but that there is~~ with a substantial probability that the defendant ~~may~~ will become competent in the foreseeable future, the court may order that the defendant remain committed to the department or the department's designee for the purpose of restoration treatment.

(c) (i) If the court determines that the defendant is incompetent to proceed ~~and that there is not~~ without a substantial probability that the defendant ~~may~~ will become competent in the foreseeable future, the court shall order the defendant released from commitment to the

department, unless the prosecutor or another individual informs the court that civil commitment proceedings ~~[pursuant to]~~ in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated.

(ii) ~~[These]~~ The civil commitment proceedings described in this Subsection (5)(c) must be initiated by a petition filed within seven days after the day on which the court makes the determination described in Subsection (4)(c), unless the court finds that there is good cause to delay the initiation of the civil commitment proceedings.

(iii) The court may order the defendant to remain ~~[in the commitment of]~~ committed to the department until the civil commitment proceedings described in this Subsection (5)(c) conclude.

(iv) If the defendant is civilly committed, the department shall ~~[notify]~~ provide notice to the ~~[court that adjudicated the defendant incompetent to proceed]~~ persons described in Subsection 62A-15-631(17)(f)(i) that the defendant will be discharged at least ~~[10]~~ 60 days before ~~[any release of the committed individual]~~ the day on which the department anticipates the defendants will be discharged.

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

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

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

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

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

(i) released; or

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

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

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

(9) If at the ~~[9-month]~~ nine-month review hearing described in Subsection (8), the court determines that the defendant is ~~[not competent]~~ incompetent to proceed, the court shall:

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

(i) released; or

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

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

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

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

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

(a) order the defendant to be:

(i) released; or

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

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

(13) Neither release from a pretrial incompetency commitment under the provisions of

this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews.

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

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

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

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

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

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

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

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

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

(19) Notice of a hearing or rehearing on competency to stand trial shall be given to the prosecuting attorney and all counsel of record as described in Subsection

62A-15-631(17)(f)(i)(C). ~~[If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.]~~

Section 18. Section **77-16a-302** is amended to read:

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

**Discharge.**

(1) (a) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days after the day on which the verdict is reached to determine whether the defendant currently has a mental illness.

(b) ~~[The]~~ At the hearing, defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

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

(a) the defendant has a mental illness; and

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

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

(b) If a defendant's period of commitment is set to expire under the circumstances described in Subsection (3)(a), the department shall provide notice to the persons described in Subsection [65A-15-631\(17\)\(f\)\(i\)](#) that the defendant will be discharged at least 60 days before the day on which the defendant's period of commitment is set to expire.

(c) The prosecutor or another individual shall indicate to the court within 30 days after the day on which the prosecutor or other individual receives the notice described in Subsection (3)(b) whether civil commitment proceedings in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated.

(d) The civil commitment proceedings described in Subsection (3)(c) shall be initiated within the 60-day period described in Subsection (3)(b), unless the court finds good cause to delay the initiation of the civil commitment proceedings.

(e) The court may order the defendant remain in the custody of the department during the civil commitment proceedings described in Subsection (3)(c) if the court finds the



1485 circumstances described in Subsection [62A-15-631](#)(3) exist.