

Representative Nelson T. Abbott proposes the following substitute bill:

MENTALLY ILL OFFENDERS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill concerns offenders with a mental condition.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides revisor instructions.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53-10-208.1**, as last amended by Laws of Utah 2021, Chapter 159

30 **53-10-403.5**, as last amended by Laws of Utah 2020, Chapter 415

31 **62A-15-610**, as last amended by Laws of Utah 2011, Chapter 366

32 **62A-15-623**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,

33 Chapter 8

34 **62A-15-902**, as last amended by Laws of Utah 2011, Chapter 366

35 **76-2-305**, as last amended by Laws of Utah 2016, Chapter 115

36 **76-3-201**, as repealed and reenacted by Laws of Utah 2021, Chapter 260 and last

37 amended by Coordination Clause, Laws of Utah 2021, Chapter 261

38 **76-3-406**, as last amended by Laws of Utah 2022, Chapter 181

39 **76-5-205.5**, as last amended by Laws of Utah 2022, Chapter 181

40 **76-5-303.5**, as last amended by Laws of Utah 2022, Chapter 181

41 **76-10-1311**, as last amended by Laws of Utah 2008, Chapter 382

42 **77-13-1**, as last amended by Laws of Utah 2011, Chapter 366

43 **77-16a-101**, as last amended by Laws of Utah 2011, Chapter 366

44 **77-16a-102**, as last amended by Laws of Utah 2019, Chapter 312

45 **77-16a-104**, as last amended by Laws of Utah 2011, Chapter 366

46 **77-16a-201**, as last amended by Laws of Utah 2018, Chapter 334

47 **77-16a-202**, as last amended by Laws of Utah 2011, Chapter 366

48 **77-16a-203**, as last amended by Laws of Utah 2011, Chapter 366

49 **77-16a-204**, as last amended by Laws of Utah 2011, Chapter 366

50 **77-16a-205**, as last amended by Laws of Utah 2018, Chapter 334

51 **77-16a-301**, as last amended by Laws of Utah 2019, Chapter 312

52 **77-16a-302**, as last amended by Laws of Utah 2011, Chapter 366

53 **77-16a-304**, as last amended by Laws of Utah 2011, Chapter 366

54 **77-16a-305**, as last amended by Laws of Utah 1993, Chapter 285

55 **77-16a-306**, as last amended by Laws of Utah 2011, Chapter 366

56 **77-27-2**, as last amended by Laws of Utah 2021, Chapter 260

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

65 REPEALS AND REENACTS:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

162 necessitating treatment in a secure mental health facility;

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

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

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

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

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

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

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

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

189 (3) The department shall:

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

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

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

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

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

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

198 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 (1) As used in this section:

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

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

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

243 condition.

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

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

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

249 (a) to pay a fine;

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

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

253 (d) to imprisonment;

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

255 (f) to death.

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

257 (i) to forfeit property;

258 (ii) to dissolve a corporation;

259 (iii) to suspend or cancel a license;

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

261 (v) to cite for contempt; or

262 (vi) to impose any other civil penalty.

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

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

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

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

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

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

273 (iii) convicted of an offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

320 (a) Section [76-5-202](#), aggravated murder;

321 (b) Section [76-5-203](#), murder;

322 (c) Section [76-5-301.1](#), child kidnaping;

323 (d) Section [76-5-302](#), aggravated kidnaping;

324 (e) Section [76-5-402](#), rape, if the individual is sentenced under Subsection

325 [76-5-402](#)(3)(b), (3)(c), or (4);

326 (f) Section [76-5-402.1](#), rape of a child;

327 (g) Section [76-5-402.2](#), object rape, if the individual is sentenced under Subsection

328 [76-5-402.2](#)(3)(b), (3)(c), or (4);

329 (h) Section [76-5-402.3](#), object rape of a child;

330 (i) Section [76-5-403](#), forcible sodomy, if the individual is sentenced under Subsection

331 [76-5-403](#)(3)(b), (3)(c), or (4);

332 (j) Section [76-5-403.1](#), sodomy on a child;

333 (k) Section [76-5-404](#), forcible sexual abuse, if the individual is sentenced under

334 Subsection [76-5-404](#)(3)(b)(i) or (ii);

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

336 (m) Section 76-5-405, aggravated sexual assault; or
337 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

367 viewpoint of a reasonable person; or

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

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

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

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

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

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

386 (5) If the trier of fact finds that the elements of aggravated murder, attempted
387 aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and
388 also finds that the existence of special mitigation under this section is established by a
389 preponderance of the evidence, the court shall enter a judgment of conviction in accordance
390 with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii),
391 respectively.

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

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

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

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

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

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

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

408 (1) As used in this section:

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

411 (ii) "Convicted" includes:

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

413 (B) a plea of no contest; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

441 (a) the HIV infection test results;

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

443 (c) photographic identification; and

444 (d) fingerprint identification.

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

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

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

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

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

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

460 in Section [63G-7-202](#).

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

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

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

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

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

471 (a) not guilty;

472 (b) guilty;

473 (c) no contest;

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

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

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

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

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

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

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

482 As used in this chapter:

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

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

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

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

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

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

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

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

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

496 ~~[(5)]~~ (8) "Mental illness" ~~[is as]~~ means the same as that term is defined in Section
497 [76-2-305](#).

498 ~~[(6)]~~ (9) "Offender with a mental ~~[illness]~~ condition" means an individual who has
499 been adjudicated guilty with a mental ~~[illness, including an individual who has an intellectual~~
500 ~~disability]~~ condition.

501 ~~[(7)]~~ (10) "UDC" means the Department of Corrections.

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

503 **77-16a-102. Jury instructions.**

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

506 (a) guilty;

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

508 (c) guilty of a lesser offense;

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

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

511 (f) not guilty.

512 (2) (a) When a defendant asserts a mental defense pursuant to Section [76-2-305](#) or
513 asserts special mitigation reducing the level of an offense pursuant to Subsection
514 [76-5-205.5](#)(2)(a), or when the evidence raises the issue and either party requests the instruction,
515 the court shall instruct the jury that if the jury finds a defendant guilty by proof beyond a
516 reasonable doubt of a charged offense or lesser included offense, the jury shall also return a
517 special verdict indicating whether the jury finds that the defendant had a mental ~~[illness]~~
518 condition at the time of the offense.

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

522 condition at the time of the offense."

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

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

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

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

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

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

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

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

548 **77-16a-103. Plea of guilty with a mental condition-- Procedures -- Sentencing --**
549 **Reduction -- Costs.**

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

552 (A) whether the defendant had a mental condition at the time of the commission of the

553 offense; and

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

555 (ii) If the parties stipulate as described in Subsection (1)(a)(i), the court shall enter

556 findings consistent with the parties' stipulation.

557 (b) If the parties do not stipulate to Subsection (1)(a)(i), the court shall hold a hearing

558 and determine, by clear and convincing evidence:

559 (i) whether the defendant had a mental condition at the time of the commission of the

560 offense; and

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

562 (c) After reviewing the stipulation described in Subsection (1)(a)(i) or conducting a

563 hearing under Subsection (1)(b):

564 (i) if the court finds that the defendant had a mental condition at the time of the

565 offense, the court shall accept the defendant's plea of guilty with a mental condition; or

566 (ii) if the court finds that the defendant did not have a mental condition at the time of

567 the offense, the court may not accept the defendant's plea of guilty with a mental condition.

568 (2) (a) If a defendant wishes to enter a plea of guilty with a mental condition for a

569 felony offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the

570 hearing described in Subsection (1)(b), the court may order the defendant to submit to an

571 examination, which may be conducted only by a forensic evaluator appointed by the

572 department, to determine:

573 (i) whether the defendant had a mental condition at the time of the commission of the

574 offense;

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

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

577 (b) (i) If a defendant wishes to enter a plea of guilty with a mental condition for a

578 misdemeanor offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the

579 hearing described in Subsection (1)(b), the court may order the defendant to submit to an

580 examination by a forensic evaluator.

581 (ii) Unless otherwise ordered by the court, the examination described in Subsection

582 (2)(b)(i) shall determine:

583 (A) whether the defendant had a mental condition at the time of the commission of the

584 offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

622 (A) evaluate the defendant; and

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

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

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

628 (A) Adult Probation and Parole; or

629 (B) a public or private entity that provides mental or behavioral health services and is
630 approved by the department or the court; or

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

632 (A) a local mental health authority; or

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

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

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

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

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

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

646 (i) proceed with sentencing under Subsection (6);
647 (ii) change the defendant's placement to a secure setting;
648 (iii) impose another sanction; or
649 (iv) take no action.
650 (6) (a) The court shall defer sentencing for a defendant who has pleaded guilty with a
651 mental condition as described in Subsection (5) until:
652 (i) the court determines, after an order to show cause hearing or a review hearing as
653 described in Subsection (5), that:
654 (A) the defendant is willfully non-compliant with treatment or supervision and is
655 unlikely to become compliant with further ordered treatment or supervision; or
656 (B) the defendant has reached the maximum benefit of treatment and supervision; or
657 (ii) one year has elapsed after the day on which the court entered the defendant's plea of
658 guilty with a mental condition.
659 (b) At the sentencing hearing, the court shall:
660 (i) consider all treatment and supervision that has occurred before the sentencing
661 hearing in the defendant's case;
662 (ii) credit any time the defendant has spent in a mental health facility or other
663 residential treatment facility or a secure facility against the defendant's sentence;
664 (iii) consider victim input;
665 (iv) consider the best interests of the defendant, including which sentence will help
666 prevent the defendant:
667 (A) from losing the defendant's ability to control the defendant's state of mental health;
668 and
669 (B) from committing additional criminal conduct related to the defendant's mental
670 condition;
671 (v) consider the best interest of public safety; and
672 (vi) consider any other relevant factor or circumstance.
673 (7) Except as provided in Subsection (7)(c), after a defendant who has been sentenced
674 under Subsection (6) has completed the defendant's sentence and any probation or parole:
675 (a) notwithstanding the contrary provisions in Subsection [76-3-402\(4\)](#) or [76-3-406\(1\)](#),
676 the court has jurisdiction to enter a judgment of conviction and shall reduce the judgment of

677 conviction for the offense by two degrees from the original offense; and

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

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

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

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

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

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

690 **77-16a-104. Verdict of guilty with a mental condition -- Hearing to determine**
691 **present mental state.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

729 **Part 2. Disposition of Defendants Found Guilty with a Mental Condition**
730 **[77-16a-201](#). Probation.**

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

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

739 mental ~~[illness]~~ condition.

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

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

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

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

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

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

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

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

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

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

766 **77-16a-202. Person found guilty with a mental condition-- Commitment to**
767 **department -- Admission to Utah State Hospital.**

768 (1) In sentencing and committing an offender with a mental ~~[illness]~~ condition to the
769 department under Subsection ~~77-16a-104~~(3)(a) or in a felony case under Subsection

770 [77-16a-103\(6\)](#), the court shall:

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

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

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

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

794 (4) The period of commitment to the department and admission to the Utah State
795 Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section
796 [77-16a-204](#) may not exceed the maximum sentence imposed by the court. Upon expiration of
797 that sentence, the administrator of the facility where the offender is located may initiate civil
798 proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for
799 People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

800 Section 19. Section [77-16a-203](#) is amended to read:

801 **77-16a-203. Review of offenders with a mental condition committed to**
802 **department -- Recommendations for transfer to Department of Corrections.**

803 (1) (a) The executive director shall designate a review team of at least three qualified
804 staff members, including at least one licensed psychiatrist, to evaluate the mental condition of
805 each offender with a mental ~~[illness]~~ condition committed to it in accordance with Section
806 77-16a-202, at least once every six months.

807 (b) If the offender has an intellectual disability, the review team shall include at least
808 one individual who is a designated intellectual disability professional, as defined in Section
809 62A-5-101.

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

812 (a) regarding the offender's:

813 (i) current mental condition;

814 (ii) progress since commitment; and

815 (iii) prognosis; and

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

818 (i) transferred to UDC; or

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

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

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

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

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

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

- 832 (i) all available clinical facts;
- 833 (ii) the diagnosis;
- 834 (iii) the course of treatment received at the mental health facility;
- 835 (iv) the prognosis for remission of symptoms;
- 836 (v) the potential for recidivism;
- 837 (vi) an estimation of the offender's dangerousness, either to self or others; and
- 838 (vii) recommendations for future treatment.

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

840 **77-16a-204. UDC acceptance of transfer of persons found guilty with a mental**
841 **condition -- Retransfer from UDC to department for admission to the Utah State**
842 **Hospital.**

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

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

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

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

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

863 (6) When an offender with a mental [illness] condition sentenced under Section
864 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is
865 evaluated and it is determined that the offender's mental condition has deteriorated or that the
866 offender has become mentally unstable, the offender may be readmitted to the Utah State
867 Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

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

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

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

875 **77-16a-205. Parole.**

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

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

882 (a) all available clinical facts;

883 (b) the diagnosis;

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

885 (d) the prognosis for remission of symptoms;

886 (e) potential for recidivism;

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

889 (g) recommendations for future treatment.

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

894 violation hearings by the board.

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

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

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

902 **77-16a-301. Mental examination of defendant.**

903 (1) (a) When the court receives notice that a defendant intends to claim that the
904 defendant is not guilty by reason of insanity or that the defendant had diminished mental
905 capacity, or that the defendant intends to assert special mitigation under Subsection
906 [76-5-205.5\(2\)\(a\)](#), the court shall order the department to examine the defendant and investigate
907 the defendant's mental condition.

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

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

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

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

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

923 (3) Within 10 days after receipt of the report described in Subsection (2)(c) from the
924 department, but not later than five days before the trial of the case, or at any other time the

925 court directs, the prosecuting attorney shall file and serve upon the defendant a notice of
926 rebuttal of the defense of a mental [~~illness~~] condition, which shall contain the names of
927 witnesses the prosecuting attorney proposes to call in rebuttal.

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

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

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

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

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

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

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

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

942 **77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

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

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

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

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

952 (3) The period of commitment described in Subsection (2) may not exceed the period
953 for which the defendant could be incarcerated had the defendant been convicted and received
954 the maximum sentence for the crime of which the defendant was accused. At the time that
955 period expires, involuntary civil commitment proceedings may be instituted in accordance with

956 Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

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

958 **77-16a-304. Review after commitment.**

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

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

963 (i) at least one psychiatrist; and

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

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

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

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

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

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

977 (i) the prosecuting attorney;

978 (ii) the defendant's attorney; and

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

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

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

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

986 (b) The court shall order the person conditionally released in accordance with Section

987 77-16a-305 if the court finds that the defendant:

988 (i) has a mental [illness] condition;

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

990 (iii) can be controlled adequately if conditionally released with treatment as a condition

991 of release.

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

993 defendant:

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

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

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

997 (d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a

998 defendant whose mental [illness] condition is in remission as a result of medication or

999 hospitalization if it can be determined within reasonable medical probability that without

1000 continued medication or hospitalization the defendant's mental [illness] condition will reoccur,

1001 making the defendant a substantial danger to self or others.

1002 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection

1003 (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

1004 Section 25. Section 77-16a-305 is amended to read:

1005 **77-16a-305. Conditional release.**

1006 (1) If the review team finds that a defendant is not eligible for discharge, in accordance

1007 with Section 77-16a-304, but that [his] the defendant's mental [illness] condition and

1008 dangerousness can be controlled with proper care, medication, supervision, and treatment if

1009 [he] the defendant is conditionally released, the review team shall prepare a report and notify

1010 the executive director, or [his] the executive director's designee, that the defendant is a

1011 candidate for conditional release.

1012 (2) The executive director, or [his] the executive director's designee, shall prepare a

1013 conditional release plan, listing the type of care and treatment that the individual needs and

1014 recommending a treatment provider.

1015 (3) The executive director, or [his] the executive director's designee, shall provide the

1016 court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by

1017 the review team under Subsection (1), and the conditional release plan. The court shall

1018 conduct a hearing on the issue of conditional release within 30 days after receipt of those
1019 documents.

1020 (4) The court may order that a defendant be conditionally released if it finds that, even
1021 though the defendant presents a substantial danger to [~~himself~~] self or others, [~~he~~] the
1022 defendant can be adequately controlled with supervision and treatment that is available and
1023 provided for in the conditional release plan.

1024 (5) The department may provide treatment or contract with a local mental health
1025 authority or other public or private provider to provide treatment for a defendant who is
1026 conditionally released under this section.

1027 Section 26. Section **77-16a-306** is amended to read:

1028 **77-16a-306. Continuing review -- Discharge.**

1029 (1) Each entity that provides treatment for a defendant committed to the department as
1030 not guilty by reason of insanity under this part shall review the status of each defendant at least
1031 once every six months. If the treatment provider finds that a defendant has recovered from the
1032 defendant's mental [~~illness~~] condition, or, if the defendant has a mental [~~illness~~] condition, no
1033 longer presents a substantial danger to self or others, [~~it~~] the treatment provider shall notify the
1034 executive director of [~~its~~] the treatment provider's findings.

1035 (2) Upon receipt of notification under Subsection (1), the executive director shall
1036 designate a review team, in accordance with Section **77-16a-304**, to evaluate the defendant. If
1037 that review team concurs with the treatment provider's assessment, the executive director shall
1038 notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a
1039 candidate for discharge. The court shall conduct a hearing, in accordance with Section
1040 **77-16a-302**, within 10 business days after receipt of that notice.

1041 (3) The court may not discharge an individual whose mental [~~illness~~] condition is in
1042 remission as a result of medication or hospitalization if it can be determined within reasonable
1043 medical probability that without continued medication or hospitalization the defendant's mental
1044 [~~illness~~] condition will reoccur, making the defendant a substantial danger to self or others.

1045 Section 27. Section **77-27-2** is amended to read:

1046 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

1047 (1) (a) There is created the Board of Pardons and Parole.

1048 (b) The board shall consist of five full-time members and not more than five pro

1049 tempore members to be appointed by the governor with the advice and consent of the Senate in
1050 accordance with Title 63G, Chapter 24, Part 2, Vacancies, and as provided in this section.

1051 (c) The members of the board shall be resident citizens of the state.

1052 (d) The governor shall establish salaries for the members of the board within the salary
1053 range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

1054 (2) (a) (i) (A) The full-time board members shall serve terms of five years.

1055 (B) The terms of the full-time members shall be staggered so one board member is
1056 appointed for a term of five years on March 1 of each year.

1057 (ii) (A) The pro tempore members shall serve terms of five years, beginning on March
1058 1 of the year of appointment, with no more than one pro tempore member term beginning or
1059 expiring in the same calendar year.

1060 (B) If a pro tempore member vacancy occurs, the board may submit the names of not
1061 fewer than three or more than five persons to the governor for appointment to fill the vacancy.

1062 (b) All vacancies occurring on the board for any cause shall be filled by the governor
1063 with the advice and consent of the Senate in accordance with this section for the unexpired
1064 term of the vacating member.

1065 (c) The governor may at any time remove any member of the board for inefficiency,
1066 neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

1067 (d) (i) A member of the board may not hold any other office in the government of the
1068 United States, this state or any other state, or of any county government or municipal
1069 corporation within a state.

1070 (ii) A member may not engage in any occupation or business inconsistent with the
1071 member's duties.

1072 (e) (i) A majority of the board constitutes a quorum for the transaction of business,
1073 including the holding of hearings at any time or any location within or without the state, or for
1074 the purpose of exercising any duty or authority of the board.

1075 (ii) An action is deemed the action of the board if the action is taken by a majority of
1076 the board regarding whether:

1077 (A) parole, pardon, commutation, or termination of a sentence is granted in an
1078 offender's case;

1079 (B) remission of a criminal accounts receivable, or a fines or forfeiture, is granted in an

1080 offender's case; or

1081 (C) an offender's payment schedule for a criminal accounts receivable is modified.

1082 (iii) A majority vote of the five full-time members of the board is required for adoption
1083 of rules or policies of general applicability as provided by statute.

1084 (iv) Notwithstanding Subsection (2)(e)(iii), a vacancy on the board does not impair the
1085 right of the remaining board members to exercise any duty or authority of the board as long as a
1086 majority of the board remains.

1087 (v) A board member shall comply with the conflict of interest provisions described in
1088 Title 63G, Chapter 24, Part 3, Conflicts of Interest.

1089 (f) (i) Any investigation, inquiry, or hearing that the board has authority to undertake or
1090 hold may be conducted by any board member or an examiner appointed by the board.

1091 (ii) When an action under Subsection (2)(f)(i) is approved and confirmed by the board
1092 and filed in the board's office, the action is considered to be the action of the board and has the
1093 same effect as if originally made by the board.

1094 (g) (i) When a full-time board member is absent or in other extraordinary
1095 circumstances, the chair may, as dictated by public interest and efficient administration of the
1096 board, assign a pro tempore member to act in the place of a full-time member.

1097 (ii) Pro tempore members shall receive a per diem rate of compensation as established
1098 by the Division of Finance and all actual and necessary expenses incurred in attending to
1099 official business.

1100 (h) The chair may request staff and administrative support as necessary from the
1101 department.

1102 (3) (a) Except as provided in Subsection (3)(b), the commission shall:

1103 (i) recommend five applicants to the governor for a full-time member appointment to
1104 the board; and

1105 (ii) consider applicants' knowledge of the criminal justice system, state and federal
1106 criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

1107 (b) The procedures and requirements of Subsection (3)(a) do not apply if the governor
1108 appoints a sitting board member to a new term of office.

1109 (4) (a) (i) The board shall appoint an individual to serve as the board's mental health
1110 adviser and may appoint other staff necessary to aid the board in fulfilling the board's

1111 responsibilities under [~~Title 77, Chapter 16a, Commitment and Treatment of Persons with a~~
 1112 ~~Mental Illness~~] Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental
 1113 Condition.

1114 (ii) The adviser shall prepare reports and recommendations to the board on all persons
 1115 adjudicated as guilty with a mental [~~illness~~] condition, in accordance with [~~Title 77, Chapter~~
 1116 ~~16a, Commitment and Treatment of Persons with a Mental Illness~~] Title 77, Chapter 16a,
 1117 Commitment and Treatment of Individuals with a Mental Condition.

1118 (b) The mental health adviser shall possess the qualifications necessary to carry out the
 1119 duties imposed by the board and may not be employed by the department or the Utah State
 1120 Hospital.

1121 (i) The board may review outside employment by the mental health advisor.

1122 (ii) The board shall develop rules governing employment with entities other than the
 1123 board by the mental health advisor for the purpose of prohibiting a conflict of interest.

1124 (c) The mental health adviser shall:

1125 (i) act as liaison for the board with the Department of Health and Human Services and
 1126 local mental health authorities;

1127 (ii) educate the members of the board regarding the needs and special circumstances of
 1128 persons with a mental [~~illness~~] condition in the criminal justice system;

1129 (iii) in cooperation with the department, monitor the status of persons in the prison
 1130 who have been found guilty with a mental [~~illness~~] condition;

1131 (iv) monitor the progress of other persons under the board's jurisdiction who have a
 1132 mental [~~illness~~] condition;

1133 (v) conduct hearings as necessary in the preparation of reports and recommendations;
 1134 and

1135 (vi) perform other duties as assigned by the board.

1136 Section 28. Section **77-27-5.3** is amended to read:

1137 **77-27-5.3. Meritless and bad faith litigation.**

1138 (1) For purposes of this section:

1139 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
 1140 guilty with a mental [~~illness~~] condition, no contest, and conviction of any crime or offense.

1141 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated

1142 for that crime or is being held in custody for trial or sentencing.

1143 (2) In any case filed in state or federal court in which a prisoner submits a claim that
1144 the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons
1145 and Parole and any county jail administrator may consider that finding in any early release
1146 decisions concerning the prisoner.

1147 Section 29. Section 77-27-10.5 is amended to read:

1148 **77-27-10.5. Special condition of parole -- Penalty.**

1149 (1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release
1150 the defendant on parole and as a condition of parole, the board may order the defendant to be
1151 prohibited from directly or indirectly engaging in any profit or benefit generating activity
1152 relating to the publication of facts or circumstances pertaining to the defendant's involvement
1153 in the criminal act for which the defendant is convicted.

1154 (2) The order may prohibit the defendant from contracting with any person, firm,
1155 corporation, partnership, association, or other legal entity with respect to the commission and
1156 reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article,
1157 tape recording, phonograph record, radio, or television presentations, live entertainment of any
1158 kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
1159 regarding the criminal conduct.

1160 (3) The board may order that the prohibition includes any event undertaken and
1161 experienced by the defendant while avoiding apprehension from the authorities or while facing
1162 criminal charges.

1163 (4) The board may order that any action taken by the defendant by way of execution of
1164 power of attorney, creation of corporate entities, or other action to avoid compliance with the
1165 board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

1166 (5) Adult Probation and Parole shall notify the board of any alleged violation of the
1167 board's order under this section.

1168 (6) The violation of the board's order shall be considered a violation of parole.

1169 (7) For purposes of this section:

1170 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
1171 guilty with a mental ~~[illness]~~ condition, no contest, and conviction of any crime or offense; and

1172 (b) "defendant" means the convicted defendant, the defendant's assignees, and

1173 representatives acting on the defendant's authority.

1174 Section 30. Section **77-36-1.1** is amended to read:

1175 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
1176 **offenses.**

1177 (1) As used in this section:

1178 (a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.

1179 (ii) "Convicted" includes:

1180 (A) a plea of guilty or guilty [~~and mentally ill~~] with a mental condition;

1181 (B) a plea of no contest; and

1182 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas
1183 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in
1184 accordance with the plea in abeyance agreement.

1185 (iii) "Convicted" does not include an adjudication in juvenile court.

1186 (b) "Criminal mischief offense" means commission or attempt to commit an offense
1187 under Section **76-6-106** by one cohabitant against another.

1188 (c) "Offense against the person" means commission or attempt to commit an offense
1189 under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide,
1190 Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital
1191 Mutilation, by one cohabitant against another.

1192 (d) "Qualifying domestic violence offense" means:

1193 (i) a domestic violence offense in Utah; or

1194 (ii) an offense in any other state, or in any district, possession, or territory of the United
1195 States, that would be a domestic violence offense under Utah law.

1196 (2) An individual who is convicted of a domestic violence offense is guilty of a class B
1197 misdemeanor if:

1198 (a) the domestic violence offense described in this Subsection (2) is designated by law
1199 as a class C misdemeanor; and

1200 (b) the individual commits or is convicted of the domestic violence offense described
1201 in this Subsection (2):

1202 (i) within 10 years after the day on which the individual is convicted of a qualifying
1203 domestic violence offense that is not a criminal mischief offense; or

1204 (ii) within five years after the day on which the individual is convicted of a criminal
1205 mischief offense.

1206 (3) An individual who is convicted of a domestic violence offense is guilty of a class A
1207 misdemeanor if:

1208 (a) the domestic violence offense described in this Subsection (3) is designated by law
1209 as a class B misdemeanor; and

1210 (b) the individual commits or is convicted of the domestic violence offense described
1211 in this Subsection (3):

1212 (i) within 10 years after the day on which the individual is convicted of a qualifying
1213 domestic violence offense that is not a criminal mischief offense; or

1214 (ii) within five years after the day on which the individual is convicted of a criminal
1215 mischief offense.

1216 (4) An individual who is convicted of a domestic violence offense is guilty of a third
1217 degree felony if:

1218 (a) the domestic violence offense described in this Subsection (4) is designated by law
1219 as a class B misdemeanor offense against the person and the individual:

1220 (i) (A) commits or is convicted of the domestic violence offense described in this
1221 Subsection (4) within 10 years after the day on which the individual is convicted of a
1222 qualifying domestic violence offense that is not a criminal mischief offense; and

1223 (B) is convicted of another qualifying domestic violence offense that is not a criminal
1224 mischief offense after the day on which the individual is convicted of the qualifying domestic
1225 violence offense described in Subsection (4)(a)(i)(A) and before the day on which the
1226 individual is convicted of the domestic violence offense described in this Subsection (4);

1227 (ii) (A) commits or is convicted of the domestic violence offense described in this
1228 Subsection (4) within five years after the day on which the individual is convicted of a criminal
1229 mischief offense; and

1230 (B) is convicted of another criminal mischief offense after the day on which the
1231 individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A)
1232 and before the day on which the individual is convicted of the domestic violence offense
1233 described in this Subsection (4); or

1234 (iii) commits or is convicted of the domestic violence offense described in this

1235 Subsection (4) within 10 years after the day on which the individual is convicted of a
1236 qualifying domestic violence offense that is not a criminal mischief offense and within five
1237 years after the day on which the individual is convicted of a criminal mischief offense; and

1238 (b) (i) the domestic violence offense described in this Subsection (4) is designated by
1239 law as a class A misdemeanor; and

1240 (ii) the individual commits or is convicted of the domestic violence offense described
1241 in this Subsection (4):

1242 (A) within 10 years after the day on which the individual is convicted of a qualifying
1243 domestic violence offense that is not a criminal mischief offense; or

1244 (B) within five years after the day on which the individual is convicted of a criminal
1245 mischief offense.

1246 Section 31. Section **77-38-302** is amended to read:

1247 **77-38-302. Definitions.**

1248 As used in this part:

1249 (1) "Convicted person" means a person who has been convicted of a crime.

1250 (2) "Conviction" means an adjudication by a federal or state court resulting from a trial
1251 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
1252 or not guilty but having a mental ~~[illness]~~ condition regardless of whether the sentence was
1253 imposed or suspended.

1254 (3) "Fund" means the Crime Victim Reparations Fund created in Section [63M-7-526](#).

1255 (4) "Memorabilia" means any tangible property of a convicted person or a
1256 representative or assignee of a convicted person, the value of which is enhanced by the
1257 notoriety gained from the criminal activity for which the person was convicted.

1258 (5) "Notoriety of crimes contract" means a contract or other agreement with a
1259 convicted person, or a representative or assignee of a convicted person, with respect to:

1260 (a) the reenactment of a crime in any manner including a movie, book, magazine
1261 article, Internet website, recording, phonograph record, radio or television presentation, or live
1262 entertainment of any kind;

1263 (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions
1264 regarding a crime involving or causing personal injury, death, or property loss as a direct result
1265 of the crime; or

1266 (c) the payment or exchange of any money or other consideration or the proceeds or
1267 profits that directly or indirectly result from the notoriety of the crime.

1268 (6) "Office" means the Utah Office for Victims of Crime.

1269 (7) "Profit" means any income or benefit:

1270 (a) over and above the fair market value of tangible property that is received upon the
1271 sale or transfer of memorabilia; or

1272 (b) any money, negotiable instruments, securities, or other consideration received or
1273 contracted for gain which is traceable to a notoriety of crimes contract.

1274 Section 32. Section **77-38b-102** is amended to read:

1275 **77-38b-102. Definitions.**

1276 As used in this chapter:

1277 (1) "Civil accounts receivable" means the same as that term is defined in Section
1278 [77-32b-102](#).

1279 (2) "Civil judgment of restitution" means the same as that term is defined in Section
1280 [77-32b-102](#).

1281 (3) (a) "Conviction" means:

1282 (i) a plea of:

1283 (A) guilty;

1284 (B) guilty with a mental ~~illness~~ condition; or

1285 (C) no contest; or

1286 (ii) a judgment of:

1287 (A) guilty; or

1288 (B) guilty with a mental ~~illness~~ condition.

1289 (b) "Conviction" does not include:

1290 (i) a plea in abeyance until a conviction is entered for the plea in abeyance;

1291 (ii) a diversion agreement; or

1292 (iii) an adjudication of a minor for an offense under Section [80-6-701](#).

1293 (4) "Criminal accounts receivable" means the same as that term is defined in Section
1294 [77-32b-102](#).

1295 (5) "Criminal conduct" means:

1296 (a) any misdemeanor or felony offense of which the defendant is convicted; or

1297 (b) any other criminal behavior for which the defendant admits responsibility to the
1298 sentencing court with or without an admission of committing the criminal behavior.

1299 (6) (a) "Defendant" means an individual who has been convicted of, or entered into a
1300 plea disposition for, criminal conduct.

1301 (b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is
1302 adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6,
1303 Juvenile Justice.

1304 (7) "Department" means the Department of Corrections.

1305 (8) "Diversion agreement" means an agreement entered into by the prosecuting
1306 attorney and the defendant that suspends criminal proceedings before conviction on the
1307 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
1308 victim, or fulfill some other condition.

1309 (9) "Office" means the Office of State Debt Collection created in Section 63A-3-502.

1310 (10) "Party" means the prosecuting attorney, the defendant, or the department involved
1311 in a prosecution.

1312 (11) "Payment schedule" means the same as that term is defined in Section
1313 77-32b-102.

1314 (12) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and
1315 expenses regardless of whether the economic injury, losses, and expenses have yet been
1316 incurred.

1317 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
1318 damages.

1319 (13) "Plea agreement" means an agreement entered between the prosecuting attorney
1320 and the defendant setting forth the special terms and conditions and criminal charges upon
1321 which the defendant will enter a plea of guilty or no contest.

1322 (14) "Plea disposition" means an agreement entered into between the prosecuting
1323 attorney and the defendant including a diversion agreement, a plea agreement, a plea in
1324 abeyance agreement, or any agreement by which the defendant may enter a plea in any other
1325 jurisdiction or where charges are dismissed without a plea.

1326 (15) "Plea in abeyance" means an order by a court, upon motion of the prosecuting
1327 attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but

1328 not, at that time, entering judgment of conviction against the defendant nor imposing sentence
1329 upon the defendant on condition that the defendant comply with specific conditions as set forth
1330 in a plea in abeyance agreement.

1331 (16) "Plea in abeyance agreement" means an agreement entered into between the
1332 prosecuting attorney and the defendant setting forth the specific terms and conditions upon
1333 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

1334 (17) "Restitution" means the payment of pecuniary damages to a victim.

1335 (18) (a) "Victim" means any person who has suffered pecuniary damages that are
1336 proximately caused by the criminal conduct of the defendant.

1337 (b) "Victim" includes:

1338 (i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes
1339 a payment to a victim under Section [63M-7-519](#);

1340 (ii) the estate of a deceased victim; and

1341 (iii) a parent, spouse, or sibling of a victim.

1342 (c) "Victim" does not include a codefendant or accomplice.

1343 Section 33. Section **78A-2-302** is amended to read:

1344 **78A-2-302. Indigent litigants -- Affidavit.**

1345 (1) As used in Sections [78A-2-302](#) through [78A-2-309](#):

1346 (a) "Convicted" means:

1347 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
1348 [~~illness~~] condition, no contest; and

1349 (ii) a conviction of any crime or offense.

1350 (b) "Indigent" means an individual who is financially unable to pay fees and costs or
1351 give security.

1352 (c) "Prisoner" means an individual who has been convicted of a crime and is
1353 incarcerated for that crime or is being held in custody for trial or sentencing.

1354 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
1355 state without prepayment of fees and costs or security if the individual submits an affidavit
1356 demonstrating that the individual is indigent.

1357 (3) A court shall find an individual indigent if the individual's affidavit under
1358 Subsection (2) demonstrates:

1359 (a) the individual has an income level at or below 150% of the United States poverty
1360 level as defined by the most recent poverty income guidelines published by the United States
1361 Department of Health and Human Services;

1362 (b) the individual receives benefits from a means-tested government program,
1363 including Temporary Assistance to Needy Families, Supplemental Security Income, the
1364 Supplemental Nutrition Assistance Program, or Medicaid;

1365 (c) the individual receives legal services from a nonprofit provider or a pro bono
1366 attorney through the Utah State Bar; or

1367 (d) the individual has insufficient income or other means to pay the necessary fees and
1368 costs or security without depriving the individual, or the individual's family, of food, shelter,
1369 clothing, or other necessities.

1370 (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)
1371 shall contain complete information on the individual's:

1372 (a) identity and residence;

1373 (b) amount of income, including any government financial support, alimony, or child
1374 support;

1375 (c) assets owned, including real and personal property;

1376 (d) business interests;

1377 (e) accounts receivable;

1378 (f) securities, checking and savings account balances;

1379 (g) debts; and

1380 (h) monthly expenses.

1381 (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the
1382 amount of money held in the prisoner's trust account at the time the affidavit under Subsection
1383 (2) is executed in accordance with Section [78A-2-305](#).

1384 (6) An affidavit of indigency under this section shall state the following:

1385 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
1386 the expenses of the action or legal proceedings which I am about to commence or the appeal
1387 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal
1388 proceedings, or appeal.

1389 Section 34. Section **78B-7-901** is amended to read:

1390 **78B-7-901. Definitions.**

1391 As used in this part:

1392 (1) "Conviction" means:

1393 (a) a verdict or conviction;

1394 (b) a plea of guilty or guilty [~~and mentally ill~~] with a mental condition;

1395 (c) a plea of no contest; or

1396 (d) the acceptance by the court of a plea in abeyance.

1397 (2) "Immediate family" means the same as that term is defined in Section 76-5-106.5.

1398 Section 35. Section **80-2-1004** is amended to read:

1399 **80-2-1004. Request for division removal of name from Licensing Information**

1400 **System -- Petition for evidentiary hearing or substantiation.**

1401 (1) Except as provided in Subsection (2), an individual whose name is listed on the
1402 Licensing Information System as of May 6, 2002, may at any time:

1403 (a) request review by the division of the individual's case and removal of the
1404 individual's name from the Licensing Information System under Subsection (3); or

1405 (b) file a petition for substantiation and a request for a finding of unsubstantiated or
1406 without merit in accordance with Section 80-3-504.

1407 (2) Subsection (1) does not apply to an individual who has been the subject of any of
1408 the following court determinations with respect to the alleged incident of abuse or neglect:

1409 (a) conviction;

1410 (b) adjudication under Section 80-3-402 or 80-6-701;

1411 (c) plea of guilty;

1412 (d) plea of guilty with a mental [~~illness~~] condition; or

1413 (e) no contest.

1414 (3) If an alleged perpetrator listed on the Licensing Information System before May 6,
1415 2002, requests removal of the alleged perpetrator's name from the Licensing Information
1416 System, the division shall, within 30 days after the day on which the request is made:

1417 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
1418 qualifies as:

1419 (A) a severe type of child abuse or neglect;

1420 (B) chronic abuse; or

1421 (C) chronic neglect; and
1422 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect
1423 described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from
1424 the Licensing Information System; or

1425 (b) determine whether to file a petition for substantiation in accordance with Section
1426 [80-3-504](#).

1427 Section 36. **Revisor instructions.**

1428 The Legislature intends that the Office of Legislative Research and General Counsel, in
1429 preparing the Utah Code database for publication, replace the terms "guilty with a mental
1430 illness" and "guilty and mentally ill" with "guilty with a mental condition" in any new language
1431 added to the Utah Code by legislation passed during the 2023 General Session.