THE NEXUS BETWEEN MENTAL HEALTH AND THE LAW

2016 FALL PROSECUTOR TRAINING CONFERENCE

(Potentially) Useful Information

Compiled by Nancy B. Cohn, Ph.D.

DEPARTMENT OF HUMAN SERVICES CONTACT NUMBERS

Adult evaluations (mentally ill defendants):

Kathy Ferreira
Utah State Hospital Forensic Services
(801) 344-4427

DSPD adult evaluations (intellectually disabled defendants):

Joe Brusatto
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Mobile (801) 786-9054
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AG for these is Steve Mikita

Juvenile competency evaluations:

Amanda Aalkema, LCSW
Juvenile Competency Program Administrator
O: 801.538.4471 C: 385.414.1767

CHECKLIST OF CONTENT AREAS FOR COMPETENCY EVALUATIONS

__ Evaluating the petition
a. Pate-level doubt**

b. need for hearing?

__Ordering the evaluation
a. "may" order the Department of Human Services to examine, **for reimbursement by DHS, must use examiners from their list.**

b. If intellectual disability/mental retardation is an issue, one expert "experienced in mental retardation assessment" shall evaluate the defendant (with experience determined by DSPD contract OR under Rules of Evidence)

__ c. **INCLUDE IN THE ORDER THAT CUSTODIANS OF MENTAL HEALTH RECORDS PERTAINING TO THE DEFENDANT SHALL PROVIDE THOSE RECORDS TO THE EXAMINERS WITHOUT THE NEED FOR CONSENT OF THE DEFENDANT OR FURTHER ORDER OF THE COURT (HIPAA LANGUAGE)**

Reading and Interpreting the Expert Report

__Pre-interview issues
a. report date
b. assessment date
c. time spent
d. location of interview(s)
e. demographic data (age, sex, race, education, marital status of defendant)
f. referral source: reason motion was raised

__Forensic Warning

__Sources of data reviewed
a. present criminal records (information, discovery, transcripts)
b. present mental health records
c. prior forensic mental health records (e.g., USH, civil commitment)
d. school records
e. psychological testing (if relevant)

__Collateral contacts
a. attorney or attorney's representative, paralegal, social services staff
b. treatment providers
c. family
d. witnesses and/or co-defendants (only with caution, permission from the State,

for collateral observations with good reason, and in limited cases; more relevant for MSO evals)
__ Brief and relevant history
__ Present mental status

COMPETENCY TO STAND TRIAL DOMAINS

__Capacity to comprehend and appreciate the charges/allegations

__Capacity to disclose to counsel pertinent facts, events, states of mind

__Capacity to comprehend and appreciate the range and nature of potential penalties

__Basic knowledge of legal strategies and options

__Engage in reasoned choice of legal strategies and options

__ Capacity to understand the adversary nature of proceedings

__Capacity to manifest appropriate courtroom behavior (demeanor and attentional/tracking issues)

__Capacity to testify relevantly

__Mental health issues and how they relate to relationship with attorney

__Medication, effects on competence, Riggins concerns**

__Malingering (feigning or exaggerating) addressed

__Treatment and restorability issues if incompetent

__Informed consent (mentioned or deferred)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

__Order for Incompetent Defendant
__Copies of expert reports
__Copies of other reports (if relevant, e.g., Pretrial Assessment)
__Other mental health documents provided to the Court (if relevant)
__Transportation order
__Reminder that prosecuting attorney is to provide USH/other facility copies of Information/Probable Cause statement, police reports, rap sheet

CHECKLIST OF CONTENT AREAS FOR MENTAL STATE AT OFFENSE/CRIMINAL RESPONSIBILITY

__ Referral data and identifying information

a. report date/date of court order (if relevant)
b. assessment date
c. time spent
d. location of interview(s)
e. demographic data (age, sex, race, education, marital status of defendant)
f. Type of MSO evaluation (insanity, diminished capacity, mentally ill at time of offense, special mitigation)
g. referral source (court-ordered, retained, rebuttal, other)

__Forensic Warning

__Sources of data obtained and reviewed

a. Interviews with defendant (date, length of interview)
b. present criminal records (information, discovery, transcripts)
c. present mental health records
d. prior forensic mental health records (e.g., USH, civil commitment)
e. school records
f. psychological testing or forensic instruments used (if relevant)

__Collateral contacts

a. attorney or attorney's representative, paralegal, social services staff
b. treatment providers
c. family
d. witnesses and/or co-defendants (with caution, permission from the State, for collateral observations of MSO)

__ Relevant History

a. Family and developmental issues
b. Education
c. Employment/military
d. Social (relationship) history
e. Complete mental health and treatment history
f. Medical issues (if relevant)
g. Substance abuse history
h. Prior contacts with the legal system

__ Present Mental Status

a. Comment about interview conditions (cuffed/uncuffed, time of day, on meds?)
b. Appearance, demeanor, ability to relate
c. Capacity to communicate
d. Cognitive issues (orientation, attention, concentration, focus, memory)
e. Thought process (thought disorder present/absent)
f. Presence/absence of delusions or reality connection
g. Presence/absence of sensory/perceptual distortions (hallucinations)
h. Mood
i. Insight into mental illness (if relevant), judgement

__ Psychological testing (if appropriate, and tied to referral issue)

__ Criminal Responsibility

a. cites statute and legal standard (e.g., diminished capacity, insanity, GWMI)
b. Description of offense in police or other official document
c. Defendant's account of the alleged offense and related time frame (detailed)
d. Collateral accounts of alleged behavior prior to and during offense (or comment that there were none available)
e. Other relevant information (e.g., mental health records in proximity)

__ Opinion Section

a. Statement about mental illness/intellectual disability at time of alleged offense, including assessment of validity
b. Clear statement about relationship between psychological symptoms/diagnosis and legally relevant capacity (e.g., <u>ability</u> to form the intent specified as an element)
c. Statement about the role of intoxication (voluntary/involuntary) if relevant

CHECKLIST OF CONTENT AREAS FOR GUILTY WITH A MENTAL ILLNESS EVALUATIONS

Reading and Interpreting the Expert Report

__ Referral data and identifying information

a. report date/date of court order (if relevant)
b. assessment date
c. time spent
d. location of interview(s)
e. demographic data (age, sex, race, education, marital status of defendant)

__Forensic Warning (including that if not mentally ill, guilty plea stands)

__Sources of data obtained and reviewed

a. Interviews with defendant (date, length of interview)
b. present criminal records (information, discovery, transcripts)
c. present mental health records
d. jail or prison write ups
e. prior forensic mental health records (e.g., USH, civil commitment)
f. school records
g. psychological testing or forensic instruments used (if relevant)

__Collateral contacts

a. attorney or attorney's representative, paralegal, social services staff
b. treatment providers
c. correctional or mental health staff if in custody
d. family

__ Relevant History

a. brief prior history (family, development, education, work)
b. Complete mental health and treatment history
c. Medical issues (if relevant)
d. Substance abuse history
e. Prior contacts with the legal system INCLUDING civil commitment

__ Present Mental Status

a. Comment about interview conditions (cuffed/uncuffed, time of day, on meds?)
b. Appearance, demeanor, ability to relate

c. Capacity to communicate
d. Cognitive issues (orientation, attention, concentration, focus, memory)
e. Thought process (thought disorder present/absent)
f. Presence/absence of delusions or reality connection
g. Presence/absence of sensory/perceptual distortions (hallucinations)
h. Mood
i. Insight into mental illness (if relevant), judgement
j. medication compliance issues/involuntary treatment?

__ Psychological testing (if appropriate, and tied to referral issue)

__ Risk assessment

a. empirical factors associated with higher/lower suicide risk addressed
b empirical factors associated with interpersonal violence addressed
c. issues related to self-care (stability, funding [SSI/Medicaid/Medicare], access to housing, medication, community support)
d. substance abuse issues
e. history of treatment compliance

__ Opinion Section

a. Statement about mental illness/intellectual disability (at time of alleged offense if relevant, current only if post-adjudication, including assessment of validity)

b. Clear statement about relationship between psychological symptoms/diagnosis and :

1. current/short-term risk of self-harm
2. current/short-term risk of harm to others/property
3. ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation
4. whether the Department of Human Services is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions

CHECKLIST OF CONTENT AREAS FOR JUVENILE COMPETENCY EVALUATIONS

__Evaluating the petition
- a. Pate-level doubt**
- b. Ensure Legal Representation

__Record review

__Pre-interview issues

- a . assessment date
- b. time spent
- c. location of interview(s)
- d. demographic data (age, sex, race, education, marital status of defendant)
- e. referral source: reason motion was raised

__Forensic Warning

__Mental Status Exam
- a. General presentation
- b. Mood, emotions, affect
- c. Thought process/perceptual issues
- d. Cognition and Intelligence
- e. Psychological Testing (if relevant)

__Collateral contacts
- a. attorney or attorney's representative, paralegal, social services staff
- b. treatment providers
- c. family
- d. witnesses and/or co-defendants (only with caution, permission from the State)

COMPETENCY TO STAND TRIAL DOMAINS

__Capacity to comprehend and appreciate the charges/allegations

__Capacity to disclose to counsel pertinent facts, events, states of mind

__Capacity to comprehend and appreciate the range and nature of potential penalties

__Basic knowledge of legal strategies and options

__Engage in reasoned choice of legal strategies and options

__ Capacity to understand the adversary nature of proceedings

__Capacity to manifest appropriate courtroom behavior (demeanor and attentional/tracking issues)

__Capacity to testify relevantly

__Mental health issues and how they relate to relationship with attorney

__Medication, effects on competence, Riggins concerns**

__Treatment and attainment issues if incompetent

SELECTED REFERENCES

THE NEXUS BETWEEN MENTAL HEALTH AND THE LAW

2016 FALL PROSECUTOR TRAINING CONFERENCE

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SELECTED LANDMARK MENTAL HEALTH CASES RELEVANT TO COMPETENCY TO PROCEED

STANDARD AND INITIAL PROCEDURES

Dusky v. United States, 362 U.S. 402 (1960): Established that in order to be competent to proceed, a defendant had to have both a rational and factual understanding of the proceedings and the potential consequences and the ability to cooperate with counsel and participate in the proceedings with a reasonable degree of rational understanding.

See also

Drope v. Missouri, 420 U.S. 162 (1975).

Medina v. California*,* 505 U.S. 437(1992*)* (Holding that the requiring the defendant to have the burden of proof and having a statutory presumption of competency does not violate due process)

Godinez v. Moran, 509 U.S. 389 (1993) (A finding that a defendant is competent to stand trial, however, is not all that is necessary before he may be permitted to plead guilty or waive his right to counsel. In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary. In this sense there *is* a "heightened" standard for pleading guilty and for waiving the right to counsel, but it is not a heightened standard of *competence.)*

Indiana v. Edwards, 554 U.S. 164 (2008) (We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves).

State v. Woodland, 945 P.2d 665 (Utah 1997) **and** ***State v. Arguelles*** 63 P.3d 731 (2003) 2003 UT 1 **(**The standard is "ability" to consult with counsel—a person is not incompetent merely because he chooses NOT to cooperate with counsel**)**

Jacobs v. State, 2001, 20 P.3d 382 (Utah 2001) **(**Fitness to stand trial is a much narrower concept than moral or social wellness, and thus, the fact that a defendant is twisted and disturbed does not necessarily mean he is unfit for trial)

PETITION SHOULD RAISE "BONA FIDE DOUBT"

Pate v. Robinson, 383 U.S. 375 (1966): established that Court should order a competency evaluation is there is a "bona fide" doubt as to the defendant's competency to stand trial. Also held that a defendant whose competency is questionable cannot waive the right to a competency evaluation.

See also
State v. Arguelles, 63 P.3d 731 (2003) 2003 UT 1, (Court not required to raise competency when the Court did not witness any facts that would rise to a bona fide level of doubt).
State v. Lafferty, 20 P.3d 342 (2001) 2001 UT 19

STATUTORY FACTORS:
State v. Lafferty, 20 P.3d 342 (2001) 2001 UT 19: (Alienists testifying as experts with respect to capital murder defendant's competency were required to consider and address all applicable statutory factors in their reports to the court; however, they were not required to consider or address defendant's present capacity to testify, as defendant chose not to testify, or necessity for and effect of currently administered psychoactive medications, as no psychoactive medication was being administered to defendant at time of hearing)

TIME LIMITS AND TOLLING

Jackson v. Indiana, 406 U.S. 715 (1972) (A person charged by the State with a criminal offense who is committed solely based on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, State must either institute (civil commitment) …or release the defendant)

INVOLUNTARY MEDICATION

Washington v. Harper, 494 U.S. 210 (1990) (The Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will if he is a danger to himself or others and treatment is his medical interest. Case also held that due process does NOT require a judicial hearing: administrative procedures may be sufficient)

Riggins v. Nevada, 504 U.S. 127 (1992) (Defendant claimed that taking anti-psychotic medication affected his right to a fair trial, because the medication affected his demeanor. Court found that, in order to justify potential "trial prejudice" State has to show an "essential state interest" or that the medication was necessary to accomplish an essential state interest).

Sell v. United States, 539 U.S. 166 (2003) (Established standard for medicating persons solely for the purpose of restoring competency to proceed, when a defendant is not dangerous or "gravely disabled" [in which case they would be medicated under the ***Harper*** standard]
FOUR FINDINGS THAT COURT IS REQUIRED TO MAKE PRIOR TO ORDERING INVOLUNTARY MEDICATION FOR PURPOSES OF COMPETENCY:

1. **IMPORTANT INTEREST**: Court must find that "important government interest" is at stake."
2. **MEDICATION FURTHERS INTEREST**: Court must find that "involuntary medication will significantly further the important state interest"
   - **A.** There must be finding that medication is ***substantially likely*** to render patient competent
   - **B.** There must be finding that medication is ***substantially unlikely*** to produce side effects that will significantly interfere with patient's ability to assist with defense
3. **NECESSITY**: Court must find that medication is "necessary to further the important state interest"
   - **A.** No less intrusive means to achieve the same result
   - **B.** Also, whether less intrusive means to medicate the person have been tried (Court Order should be last resort).
4. **PROPRIETY:** Court must find that administration of the drugs is in the patient's best medical interest in light of his medical condition

State v. Barzee, 177 P.3d 48, 593 (UT 2007) 2007 UT 95

COMPETENCY TO BE EXECUTED/ ADULT AND JUVENILE ISSUES

Ford v. Wainwright, 477 U.S. 399 (1986) (The Eighth Amendment prohibits the State from inflicting the penalty of death upon a prisoner who is insane)

Panetti v. Quarterman, 551 U.S. 930 (2007) [competency to be executed].

Roper v. Simmons, 543 U.S. 551 (2005) (Execution of individuals who were under 18 years of age at time of their capital crimes is prohibited by Eighth and Fourteenth Amendments; abrogating *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306.)

OTHER LANDMARK CASES NOT DIRECTLY RELATED TO COMPETENCY

Ake v. Oklahoma, 470 U.S. 68 (1985) (When a defendant has made a preliminary showing that this sanity at the time of the offense is likely to be a significant factor, the Constitution requires that a State provide access to a psychiatrist's assistance on this issue if the defendant cannot afford one)

Miller v. Alabama, 132 S.Ct.2455 (2012)(Mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments)

Foucha v. Louisiana, 504 U.S. 71 (1992) (It is a violation of the due process clause to hold an insanity acquittee when they are no longer mentally ill, even if they are still dangerous).

State v. Herrera, 895 P.2d 359 (Utah 1995)(Upholding constitutionality of Utah's NGRI law)

Selected Competency and Juvenile Competency References

Backus, M.S. (2011). Competency in Juvenile Delinquency Proceedings, Oklahoma Bar Journal, 82, 20.

Bonnie, R.J., & Grisso, T. (2000). Adjudicative competence and youthful offenders. In T. Grisso & R. Schwartz (Eds.) Youth on trial: A developmental perspective on juvenile justice (73-103). Chicago: University of Chicago Press.

Burns, D. A. (2011). Mental competency: Best practices model. National Judicial College.

Golding, S.L. (1993). Interdisciplinary Fitness Interview-Revised: A training manual.

Grisso, T. (1998). *Forensic evaluation of juveniles*. Sarasota, FL: Professional Resource Press.

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Johnson, K.M. (2006). Juvenile Competency Statutes: A model for State Legislation, Indiana Law Journal, 81, 1067-1095.

Hess, A.K., and Weiner, I.B. (2005) Handbook of Forensic Psychology, 3rd Ed. Wiley & Sons.

Kruh, I. & Grisso, T. (2009). Evaluation of Juveniles' Competence to Stand Trial. Oxford University Press.

Larson, K. & Grisso, T. (2011). Developing Statutes for competence to stand trial in juvenile delinquency proceedings; A guide for lawmakers. Available here: http://works.bepress.com/thomas_grisso/106/.

Majd, Scali, Song, Keller, & Lourdes, (2009). Models for Change, Systems Reform in Juvenile Justice. Available here: http://www.njdc.info/macarthur2.php

Melton, G.B., Petrila, J., Poythress, N., and Slobogin, C. (2007). Psychological Evaluations for the Courts: A handbook for Mental Health Professionals and Lawyers, 3rd Ed. Guildford Press.

Scott E. & Grisso, T. (2005). Development incompetence, due process, and juvenile justice policy. North Carolina Law Review. 83 NCL Rev. 793.

Steinberg L., & Schwartz, R.G. (2000). Developmental psychology goes to court. In T. Grisso & R.G. Schwartz (Eds.), *Youth on trial: A developmental perspective* (pp. 291-324). Chicago, IL: The University of Chicago Press.

Zapf, P. & Roesch, R. (2009) Evaluation of Competence to Stand Trial. Oxford University Press.

Also see:

Heilbrun, K., Grisso, T., & Goldstein, A. (2009) Foundations of Forensic Mental Health Assessment. Oxford University Press.

Packer, I. (2009) Evaluation of Criminal Responsibility. Oxford University Press.

SELECTED UTAH STATUTES RELEVANT TO THE NEXUS OF MENTAL HEALTH AND THE LAW

2016 Fall Prosecutor Training Conference

Compiled by Nancy B. Cohn, Ph.D.

Effective 5/10/2016

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

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

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

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

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

(4) As used in this section:

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

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

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

Amended by Chapter 115, 2016 General Session

76-5-205.5. Special mitigation reducing the level of criminal homicide offense -- Burden of proof -- Application to reduce offense.

(1) Special mitigation exists when the actor causes the death of another or attempts to cause the death of another:

(a) (i) under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305;

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

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

(b) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.

(2) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (1)(a) on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(3) Under Subsection (1)(b), emotional distress does not include:

(a) a condition resulting from mental illness as defined in Section 76-2-305; or

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

(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(5) (a) If the trier of fact finds the elements of an offense as listed in Subsection (5)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (5)(b).

(b) If under Subsection (5)(a) the offense is:

(i) aggravated murder, the defendant shall instead be found guilty of murder;

(ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;

(iii) murder, the defendant shall instead be found guilty of manslaughter; or

(iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

(6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.

(b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (5).

(c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution has established all the elements beyond a reasonable doubt.

(d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a hung jury.

(7) (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.

(8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

Amended by Chapter 206, 2009 General Session

Effective 5/10/2016

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

(1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition.

(b) The district court in which the petition is filed:

(i) shall review the allegations of incompetency;

(ii) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition if the court finds the petition is not clearly sufficient on its face;

(iii) shall hold a hearing if the petition is opposed by either party;

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

(v) shall order an examination of the defendant and a hearing on the defendant's mental condition if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to intellectual disability, at least one expert experienced in intellectual disability assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

(i) comprehend and appreciate the charges or allegations against the defendant;

(ii) disclose to counsel pertinent facts, events, and states of mind;

(iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;

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

(v) understand the adversary nature of the proceedings against the defendant;

(vi) manifest appropriate courtroom behavior; and

(vii) testify relevantly, if applicable;

(b) the impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel;

(c) if psychoactive medication is currently being administered:

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

(ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and

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

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

(a) which of the above factors contributes to the defendant's incompetency;

(b) the nature of the defendant's mental disorder or intellectual disability and its relationship to the factors contributing to the defendant's incompetency;

(c) the treatment or treatments appropriate and available;

(d) the defendant's capacity to give informed consent to treatment to restore competency; and

(e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.

(6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by the experts shall:

(a) identify the specific matters referred for evaluation;

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

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

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

(8) (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9) (a) When the report is received the court shall set a date for a mental hearing. The hearing shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(b) Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. A conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) (a) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.

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

(11) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the expert testimony, studies, and reports provided under this section.

(12) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b). The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing the defendant's progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(13) (a) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (12), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or a designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination.

(b) The executive director of the Department of Human Services or a designee may refuse to accept a defendant as a patient unless the defendant is accompanied by a transportation and commitment order which is accompanied by the reports.

(14) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing the defendant's progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

(a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;

(b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and

(c) information concerning the defendant's known criminal history.

(15) The court may make any reasonable order to insure compliance with this section.

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Amended by Chapter 115, 2016 General Session

77-14-4. Insanity or diminished mental capacity -- Notice requirement.

(1) If a defendant proposes to offer evidence that the defendant is not guilty as a result of insanity or that the defendant had diminished mental capacity, or proposes to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under Subsection 76-5-205.5(1)(a), the defendant shall file and serve the prosecuting attorney with written notice of the intention to claim the defense at the time of arraignment or as soon afterward as practicable, but not fewer than 30 days before the trial.

(2) If the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, the court shall proceed in accordance with the requirements described in Section 77-16a-301.

Amended by Chapter 206, 2009 General Session

77-16a-103. Plea of guilty with a mental illness at the time of the offense.

(1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.

(2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.

(3) (a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.

(b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.

(4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section 77-16a-104.

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

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

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

Amended by Chapter 366, 2011 General Session

77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine present mental state.

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

(2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.

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

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

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

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

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

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

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

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

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

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

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

Amended by Chapter 366, 2011 General Session

77-16a-301. Mental examination of defendant

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

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

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

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

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

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

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

(4) The reports of any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.

(5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).

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

(7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

Amended by Chapter 206, 2009 General

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

(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual has a mental illness and should be involuntarily committed. The application shall include:

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

(i) name;

(ii) date of birth; and

(iii) Social Security number; and

(b) either:

(i) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that the physician or designated examiner is of the opinion that the individual is mentally ill and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the individual has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

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

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

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

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

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

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger, as defined in Section 62A-15-602, to self or others requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately

place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, the examiner shall immediately send the report in writing to the clerk of the court.

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

(5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the

basis for the patient's involuntary commitment, and that findings resulting from the examination will be made available to the court.

(c) A time shall be set for a hearing to be held within 10 calendar days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that the patient has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

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

(b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

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

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

(f) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes; and

(G) medication records pertaining to the current commitment.

(ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(10) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)(e), the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(b) because of the proposed patient's mental illness the proposed patient poses a substantial danger, as defined in Section 62A-15-602, to self or others, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

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

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

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

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions

justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

(13) Any person committed as a result of an original hearing or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

62A-15-602. Definitions.

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

(1) "Adult" means a person 18 years of age or older.

(2) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

(3) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

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

(5) "Harmful sexual conduct" means any of the following conduct upon an individual without the individual's consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in Subsections 76-5-406(1) through (12):

(a) sexual intercourse;

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

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

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

(6) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

(7) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

(8) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

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

(10) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

(11) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

(12) "Patient" means an individual under commitment to the custody or to the treatment services of a local mental health authority.

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

(14) "Substantial danger" means the person, by his or her behavior, due to mental illness:

(a) is at serious risk to:

(i) commit suicide;

(ii) inflict serious bodily injury on himself or herself; or

(iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

(b) is at serious risk to cause or attempt to cause serious bodily injury or engage in harmful sexual conduct.

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

Amended by Chapter 248, 2012 General Session