

Candice B. Pierucci proposes the following substitute bill:

Capital Felony Case Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor:

LONG TITLE

General Description:

This bill amends statutes related to capital felony cases.

Highlighted Provisions:

This bill:

- defines and modifies terms related to capital felony cases;
- clarifies the statutory provisions regarding a sentencing proceeding in a capital felony case;
- requires the sentencing court to advise a defendant in a capital felony case of the right to a direct appeal and of the statutory provisions for postconviction relief;
- requires the sentencing court to appoint appellate counsel for a defendant who is sentenced to death;
- modifies the automatic review process by the Utah Supreme Court in a capital felony case in which the defendant is sentenced to death;
- addresses the priority of capital felony cases;
- addresses the extension of a report on a defendant's competency to stand trial;
- allows for the appointment of a psychologist to determine if a defendant is intellectually disabled when a prosecutor intends to seek a sentence of death;
- modifies statutory provisions regarding the pretrial process for determining whether an individual is intellectually disabled and not subject to a sentence of death;
- allows for an appeal of an order determining whether a defendant is intellectually disabled and not subject to a sentence of death;
- clarifies statutes regarding the execution of a sentence of death;
- modifies the requirements for a stay or suspension of a sentence of death and for an order of execution;
- modifies statutory provisions regarding a notification of pregnancy or incompetency of an

- 29 inmate who is sentenced to death;
- 30 ▸ addresses a petition for an inquiry on whether a defendant is competent to be executed,
31 including the requirements for a successive petition;
- 32 ▸ amends the examination process for a petition to determine whether an inmate is
33 competent to be executed;
- 34 ▸ addresses the procedures when there is a finding of competency or incompetency for an
35 inmate sentenced to death;
- 36 ▸ amends the subject matter jurisdiction of the Utah Supreme Court and the district court
37 with regard to a capital felony case;
- 38 ▸ provides that the Utah Supreme Court, after a direct appeal, appoint defense counsel to
39 represent an individual sentenced to death on a petition for postconviction relief;
- 40 ▸ requires the Utah Supreme Court to maintain a list of qualified defense counsel for
41 purposes of appointing defense counsel for an individual sentenced to death on a petition
42 for postconviction relief;
- 43 ▸ increases the amount of attorney fees and litigation expenses that a court may authorize
44 for a petition for postconviction relief in a death penalty case;
- 45 ▸ repeals a statute pertaining to capital cases; and
- 46 ▸ makes technical and conforming changes.

47 **Money Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

50 None

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **76-3-206**, as last amended by Laws of Utah 2016, Chapter 277

54 **76-3-207**, as last amended by Laws of Utah 2016, Chapter 277

55 **77-15-5**, as last amended by Laws of Utah 2025, Chapter 46

56 **77-15a-104**, as last amended by Laws of Utah 2023, Chapter 330

57 **77-15a-105**, as last amended by Laws of Utah 2023, Chapter 330

58 **77-18a-1**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

59 **77-19-6**, as last amended by Laws of Utah 2008, Chapter 382

60 **77-19-8**, as last amended by Laws of Utah 2011, Chapter 165

61 **77-19-9**, as last amended by Laws of Utah 2008, Chapter 382

62 **77-19-10**, as last amended by Laws of Utah 2025, Chapter 299

63 **77-19-203**, as last amended by Laws of Utah 2025, Chapter 46
 64 **77-19-204**, as last amended by Laws of Utah 2023, Chapter 330
 65 **77-19-205**, as last amended by Laws of Utah 2023, Chapter 330
 66 **78A-3-102**, as last amended by Laws of Utah 2025, Second Special Session, Chapter 3
 67 **78A-5-102**, as last amended by Laws of Utah 2025, Chapter 426
 68 **78B-9-202**, as last amended by Laws of Utah 2022, Chapter 120

69 ENACTS:

70 **77-19-202.5**, Utah Code Annotated 1953
 71 **77-19-203.5**, Utah Code Annotated 1953
 72 **77-19-204.5**, Utah Code Annotated 1953

73 REPEALS AND REENACTS:

74 **77-19-201**, as last amended by Laws of Utah 2005, Chapter 71
 75 **77-19-202**, as last amended by Laws of Utah 2008, Chapter 382

76 RENUMBERS AND AMENDS:

77 **77-15a-101.1**, (Renumbered from 77-15a-102, as last amended by Laws of Utah 2016,
 78 Chapter 115)
 79 **77-15a-101.5**, (Renumbered from 77-15a-101, as last amended by Laws of Utah 2016,
 80 Chapter 115)

81 REPEALS:

82 **77-15a-103**, as last amended by Laws of Utah 2016, Chapter 115
 83 **77-18a-2**, as enacted by Laws of Utah 1990, Chapter 7
 84 **77-19-7**, as last amended by Laws of Utah 1994, Chapter 13

85

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

87 Section 1. Section **76-3-206** is amended to read:

88 **76-3-206 . Capital felony -- Penalties.**

89 (1) ~~[A person]~~ An individual who has pled guilty to or been convicted of a capital felony
 90 shall be sentenced in accordance with this section and Section 76-3-207.

91 (2)(a) If the ~~[person]~~ individual described in Subsection (1) was 18 years ~~[of age]~~ old or
 92 older at the time the offense was committed, the sentence shall be:

93 (i) death;

94 (ii) an indeterminate prison term of not less than 25 years and that may be for life; or

95 (iii) on or after April 27, 1992, life in prison without parole.

96 (b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the ~~[person was younger than 18~~

97 ~~years of age]~~ individual was under 18 years old at the time the offense was committed
 98 and was sentenced on or after May 10, 2016.

99 [~~(3)(a) The judgment of conviction and sentence of death is subject to automatic review
 100 by the Utah State Supreme Court within 60 days after certification by the sentencing
 101 court of the entire record unless time is extended an additional period not to exceed
 102 30 days by the Utah State Supreme Court for good cause shown.]~~

103 [~~(b) The review by the Utah State Supreme Court has priority over all other cases and
 104 shall be heard in accordance with rules promulgated by the Utah State Supreme Court.]~~

105 Section 2. Section **76-3-207** is amended to read:

106 **76-3-207 . Capital felony -- Sentencing proceeding -- Appeals.**

107 (1)(a) When a defendant has pled guilty to or been found guilty of a capital felony, [
 108 ~~there shall be further proceedings before the court or jury on the issue of sentence]~~ a
 109 further proceeding shall immediately be conducted on the issue of the defendant's
 110 sentence for the capital felony.

111 (b) [~~In the case of a plea of]~~ When a defendant has pled guilty to a capital felony, the
 112 sentencing [proceedings shall be] proceeding described in Subsection (1)(a) is
 113 conducted before:

114 (i) a jury[-or,] ; or

115 (ii) upon request of the defendant and with the approval of the court and the consent
 116 of the prosecution, [by the court which] the court that accepted the plea.

117 (c)(i) When a defendant has been found guilty of a capital felony, the [~~proceedings~~
 118 ~~shall be]~~ sentencing proceeding described in Subsection (1)(a) is conducted before[
 119 ~~the court or jury which found the defendant guilty, provided the defendant may~~
 120 ~~waive hearing before the jury with the approval of the court and the consent of the~~
 121 ~~prosecution, in which event the hearing shall be before the court.] :~~

122 (A) the jury that found the defendant guilty; or

123 (B) the court upon a waiver by the defendant of the sentencing proceeding being
 124 conducted before a jury, with approval of the court and the consent of the
 125 prosecution.

126 (ii) If circumstances make it impossible or impractical to [~~reconvene]~~ continue with
 127 the same jury for the [sentencing proceedings] sentencing proceeding, the court
 128 may dismiss that jury and convene a new jury for the [proceedings] proceeding.

129 (d) If a retrial of the sentencing [~~proceedings]~~ proceeding is necessary as a consequence
 130 of a remand from an appellate court, the sentencing authority [~~shall be determined as~~

- 131 ~~provided in~~ is determined in accordance with Subsection ~~[(6)]~~ (13).
- 132 (2)(a) In ~~[capital sentencing proceedings]~~ a sentencing proceeding described in
- 133 Subsection (1)(a), evidence may be presented on:
- 134 (i) the nature and circumstances of the crime;
- 135 (ii) the defendant's character, background, history, and mental and physical condition;
- 136 (iii) the victim and the impact of the crime on the victim's family and community
- 137 without comparison to other persons or victims; and
- 138 (iv) any other facts in aggravation or mitigation of the penalty that ~~[the court~~
- 139 ~~considers]~~ are relevant to the sentence.
- 140 (b)(i) ~~[Any evidence the court considers to have probative force may be received]~~
- 141 Relevant and reliable evidence may be received regardless of ~~[its]~~ the evidence's
- 142 admissibility under the ~~[exclusionary]~~ rules of evidence.
- 143 (ii) The ~~[state's attorney]~~ prosecuting attorney and the defendant shall be permitted to
- 144 present argument for or against the sentence of death.
- 145 (3) Aggravating circumstances include those outlined in Section 76-5-202.
- 146 (4)(a) As used in this Subsection (4), "mental condition" does not include an
- 147 abnormality manifested primarily by repeated criminal conduct.
- 148 (b) Mitigating circumstances include:
- 149 ~~[(a)]~~ (i) the defendant has no significant history of prior criminal activity;
- 150 ~~[(b)]~~ (ii) the homicide was committed while the defendant was under the influence of
- 151 mental or emotional disturbance;
- 152 ~~[(c)]~~ (iii) the defendant acted under duress or under the domination of another person;
- 153 ~~[(d)]~~ (iv) at the time of the homicide, the capacity of the defendant to appreciate the
- 154 wrongfulness of ~~[his]~~ the defendant's conduct or to conform ~~[his]~~ the defendant's
- 155 conduct to the requirement of law was impaired as a result of a mental condition,
- 156 intoxication, or influence of drugs~~[, except that "mental condition" under this~~
- 157 ~~Subsection (4)(d) does not mean an abnormality manifested primarily by repeated~~
- 158 ~~riminal conduct]~~;
- 159 ~~[(e)]~~ (v) the youth of the defendant at the time of the crime;
- 160 ~~[(f)]~~ (vi) the defendant was an accomplice in the homicide committed by another [~~person]~~
- 161 individual and the defendant's participation was relatively minor; and
- 162 ~~[(g)]~~ (vii) any other fact in mitigation of the penalty.
- 163 (5)~~[(a)]~~ The court or jury, as the case may be, shall retire to consider the ~~[penalty]~~
- 164 defendant's sentence.~~[Except as provided in Subsections 76-3-207.5(2) and~~

165 76-3-206(2)(b), in all proceedings before a jury, under this section, it shall be
 166 instructed as to the punishment to be imposed upon a unanimous decision for death
 167 and that the penalty of either an indeterminate prison term of not less than 25 years
 168 and which may be for life or life in prison without parole, shall be imposed if a
 169 unanimous decision for death is not found.]

170 [(b)]

171 (6)(a) Except as provided in Subsections 76-3-206(2)(b) and 76-3-207.5(2), the court
 172 shall instruct a jury in a sentencing proceeding for a capital felony on the punishment
 173 to be imposed in accordance with this Subsection (6).

174 (b) The [~~death penalty~~] sentence of death shall only be imposed if, after considering the
 175 totality of the aggravating and mitigating circumstances, the jury is persuaded beyond
 176 a reasonable doubt that:

177 (i) total aggravation outweighs total mitigation [~~, and is further persuaded, beyond a~~
 178 ~~reasonable doubt, that~~] ; and

179 (ii) the imposition of the [~~death penalty~~] sentence of death is justified and appropriate
 180 in the circumstances.

181 (c) If the jury reports a unanimous [~~agreement~~] decision to impose the sentence of death,
 182 the court shall:

183 (i) discharge the jury; ~~and~~ [~~shall~~]

184 (ii) impose the sentence of death.

185 [(e)]

186 (d) If the jury is unable to reach a unanimous decision imposing the sentence of death,
 187 the jury shall [~~then~~] determine whether the penalty of life in prison without parole
 188 shall be imposed, except as provided in Subsection 76-3-207.5(2).

189 (e) The penalty of life in prison without parole shall only be imposed if the jury
 190 determines that the sentence of life in prison without parole is appropriate.

191 (f) If the jury reports agreement by 10 jurors or more to impose the sentence of life in
 192 prison without parole, the court shall:

193 (i) discharge the jury [~~and shall~~] ; and

194 (ii) impose the sentence of life in prison without parole.

195 (g) If 10 jurors or more do not agree upon a sentence of life in prison without parole, the
 196 court shall:

197 (i) discharge the jury; and

198 (ii) impose an indeterminate prison term of not less than 25 years and which may be

199 for life.

200 [~~(d)~~] (7) [~~If the defendant waives hearing before the jury as to sentencing, with the approval~~
 201 ~~of the court and the consent of the prosecution]~~ If the sentencing proceeding described in
 202 Subsection (1)(a) is conducted before the court as described in Subsection (1)(b) or (c),
 203 the court shall determine the appropriate penalty according to the standards of [
 204 Subsections (5)(b) and (e)] Subsection (6).

205 [~~(e)~~] (8) If the defendant is sentenced to more than one term of life in prison with or without
 206 the possibility of parole, or in addition to a sentence of life in prison with or without the
 207 possibility of parole the defendant is sentenced for other offenses [which] that result in
 208 terms of imprisonment, the [judge] court shall determine whether the terms of
 209 imprisonment shall be imposed as concurrent or consecutive sentences in accordance
 210 with Section 76-3-401.

211 [~~(6)~~] Upon any appeal by the defendant where the sentence is of death, the appellate court, if
 212 it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of
 213 death and remand the case to the trial court for new sentencing proceedings to the extent
 214 necessary to correct the error or errors. An error in the sentencing proceedings may not
 215 result in the reversal of the conviction of a capital felony. In cases of remand for new
 216 sentencing proceedings, all exhibits and a transcript of all testimony and other evidence
 217 properly admitted in the prior trial and sentencing proceedings are admissible in the new
 218 sentencing proceedings, and if the sentencing proceeding was before a:]

219 [~~(a)~~] jury, a new jury shall be impaneled for the new sentencing proceeding unless the
 220 defendant waives the hearing before the jury with the approval of the court and the
 221 consent of the prosecution, in which case the proceeding shall be held according to
 222 Subsection (6)(b) or (c), as applicable;]

223 [~~(b)~~] judge, the original trial judge shall conduct the new sentencing proceeding; or]

224 [~~(c)~~] judge, and the original trial judge is unable or unavailable to conduct a new
 225 sentencing proceeding, then another judge shall be designated to conduct the new
 226 sentencing proceeding, and the new proceeding will be before a jury unless the
 227 defendant waives the hearing before the jury with the approval of the court and the
 228 consent of the prosecution.:]

229 (9)(a) If a defendant is sentenced to death, the court shall:

230 (i) advise the defendant, at the sentencing proceeding, of the defendant's right to a
 231 direct appeal and of the provisions for postconviction relief in Title 78B, Chapter
 232 9, Part 1, General Provisions; and

- 233 (ii) appoint appellate counsel for the defendant in accordance with the requirements
234 for a capital case under Rule 8 of the Utah Rules of Criminal Procedure and Title
235 78B, Chapter 22, Indigent Defense Act.
- 236 (b) Subsection (9)(a)(ii) does not prevent the defendant from obtaining private counsel
237 or waiving the appointment of appellate counsel.
- 238 (10)(a) If a defendant is convicted and sentenced to death for a capital felony and the
239 defendant waives the defendant's right to an appeal or fails to file a timely notice of
240 appeal:
- 241 (i) the judgment is subject to automatic review by the Supreme Court as to whether
242 there was manifest injustice; and
- 243 (ii) the sentencing court shall promptly certify the entire record of the defendant's
244 case to the Supreme Court.
- 245 (b) The Supreme Court shall conduct the automatic review of a defendant's case within
246 120 days after the day on which the sentencing court certifies the entire record of the
247 defendant's case.
- 248 (c) Except as provided in Subsection (10)(d), an automatic review is conducted without
249 briefing from any party.
- 250 (d) If the Supreme Court determines that the conviction should be modified, or the
251 conviction or sentence should be vacated, upon an automatic review:
- 252 (i) the Supreme Court shall request that the attorney general submit briefing to
253 address the error for which the Supreme Court determined that the conviction
254 should be modified or the conviction or sentence should be vacated; and
- 255 (ii) the Supreme Court may appoint an amicus curae to submit briefing in place of the
256 defendant.
- 257 (e) Upon any briefing described in Subsection (10)(d), the Supreme Court may modify
258 the conviction, or affirm or vacate the conviction or sentence, of the defendant.
- 259 (11)(a) A reversible error in a sentencing proceeding for a capital felony does not result
260 in the reversal of the conviction for the capital felony.
- 261 (b) If the Supreme Court remands a capital felony case for a new sentencing proceeding,
262 all exhibits and a transcript of all testimony and other evidence that was properly
263 admitted in the prior trial and sentencing proceeding are admissible in the new
264 sentencing proceeding.
- 265 (12)(a) An automatic review described in Subsection (10) has priority over all other
266 cases before the Supreme Court.

- 267 (b) An appeal or petition for extraordinary relief in a capital felony case has priority over
 268 all noncapital felony cases before the Supreme Court and should be expedited.
- 269 (c) A petition for post-conviction relief in a capital case has priority over all other cases
 270 in the district court, except for a trial of a capital felony case, and should be expedited.
- 271 (13) On a remand for a new sentencing proceeding, the new sentencing proceeding is
 272 conducted before:
- 273 (a) except as provided in Subsection (13)(b) or (c), a new jury if:
- 274 (i) the prior sentencing proceeding was conducted before a jury; or
 275 (ii) the prior sentencing proceeding was conducted before the court and the original
 276 trial judge is unable or unavailable to conduct the new sentencing proceeding;
- 277 (b) the original trial judge if:
- 278 (i) the defendant waives the new sentencing proceeding being conducted before a
 279 jury, with the approval of the court and the consent of the prosecution; and
 280 (ii) the prior sentencing proceeding was conducted before the court; or
- 281 (c) a new trial judge if:
- 282 (i) the defendant waives the new sentencing proceeding being conducted before a
 283 jury, with the approval of the court and the consent of the prosecution; and
 284 (ii) the original trial judge is unable or unavailable to conduct the new sentencing
 285 proceeding.
- 286 [(7)] (14) If the [penalty] sentence of death is held to be unconstitutional by the Utah
 287 Supreme Court or the United States Supreme Court, the court having jurisdiction over a [
 288 person] defendant previously sentenced to death for a capital felony shall:
- 289 (a) cause the [person] defendant to be brought before the court[~~, and the court shall~~]; and
 290 (b) sentence the [person] defendant to life in prison without parole.
- 291 [(8)] (15)(a) If the appellate court's final decision regarding any appeal of a sentence of
 292 death precludes the imposition of [the death penalty due to mental retardation or
 293 subaverage general intellectual functioning under Section 77-15a-101] the sentence
 294 of death due to an intellectual disability as described in Section 77-15a-101.5, the
 295 court having jurisdiction over a defendant previously sentenced to death for a capital
 296 felony shall:
- 297 (i) cause the defendant to be brought before the [sentencing court, and the court shall]
 298 court; and
- 299 (ii) sentence the defendant to life in prison without parole.
- 300 (b) If the appellate court precludes the imposition of the [death penalty] sentence of death

301 under Subsection ~~[(8)(a)]~~ (15)(a), but the appellate court finds that sentencing the
 302 defendant to life in prison without parole is likely to result in a manifest injustice, ~~[it]~~
 303 the appellate court may remand the case to the sentencing court for ~~[further~~
 304 ~~sentencing proceedings]~~ a sentencing proceeding to determine if the defendant should
 305 serve a sentence of life in prison without parole or an indeterminate prison term of
 306 not less than 25 years and which may be for life.

307 Section 3. Section **77-15-5** is amended to read:

308 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**
 309 **defendant -- Scope of examination and report.**

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

- 311 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
- 312 (b) the court raises the issue of the defendant's competency under Section 77-15-4.

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

- 314 (a) shall inform the court in which criminal proceedings are pending of the petition, if
 315 the petition is not filed in the court in which criminal proceedings are pending;
- 316 (b) shall review the allegations of incompetency;
- 317 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
 318 the petition, if the court finds the petition is not clearly sufficient on its face;
- 319 (d) shall hold a hearing, if the petition is opposed by either party; and
- 320 (e) may not order an examination of the defendant or order a hearing on the mental
 321 condition of the defendant unless the court finds that the allegations in the petition
 322 raise a bona fide doubt as to the defendant's competency to stand trial.

323 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency
 324 to stand trial, the court shall order the department to have one or two forensic
 325 evaluators complete a competency evaluation for the defendant in accordance with
 326 Subsection (3)(b) and provide a report to the court regarding the competency of the
 327 defendant to stand trial.

328 (b) The court shall order the department to have the defendant evaluated by one forensic
 329 evaluator unless:

- 330 (i) the defendant is charged with a capital felony; or
- 331 (ii) the defendant is charged with a felony that is not a capital felony, and the court
 332 determines, based on the allegations in the petition, that good cause exists to order
 333 two competency evaluations.

334 (c)(i) This section does not prohibit a party from seeking an additional forensic

- 335 evaluator to conduct a competency evaluation of the defendant.
- 336 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),
337 the party shall:
- 338 (A) select the additional forensic evaluator; and
339 (B) pay the costs of the additional forensic evaluator.
- 340 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
341 stand trial alone may not take the place of a competency evaluation ordered under
342 this Subsection (3).
- 343 (e) In accordance with state licensing laws, the court may only order the department to
344 provide an initial evaluation and progress toward competency evaluation for a
345 defendant who is located within the state.
- 346 (4)(a) If the petition or other information sufficiently raises concerns that the defendant
347 may have an intellectual disability, at least one forensic evaluator who is experienced
348 in assessments of intellectual disabilities shall conduct a competency evaluation.
- 349 (b) The petitioner or other party, as directed by the court or requested by the department,
350 shall provide to the forensic evaluator nonmedical information and materials relevant
351 to a determination of the defendant's competency, including the charging document,
352 arrest or incident reports pertaining to the charged offense, known criminal history
353 information, and known prior mental health evaluations and treatments.
- 354 (c) For purposes of a competency evaluation, a custodian of mental health records
355 pertaining to the defendant, including the defendant's prior mental health evaluations
356 or records relating to the defendant's substance use disorder, may provide the records
357 to:
- 358 (i) with the defendant's consent, a forensic evaluator or the department on the
359 department's request; or
360 (ii) a forensic evaluator by court order.
- 361 (d) A court order under Subsection (4)(c) shall include a protective order that expires
362 180 days after the day on which:
- 363 (i) the defendant is found guilty;
364 (ii) the defendant enters a guilty plea;
365 (iii) the court sentences the defendant; or
366 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 367 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),
368 the court shall order the forensic evaluator to destroy all records subject to the

- 369 protective order within the 180 day period described in Subsection (4)(d).
- 370 (ii) A forensic evaluator is not required to destroy the records subject to the
371 protective order if destroying the records is a violation of ethical standards to
372 which the forensic evaluator is subject for occupational licensing.
- 373 (f) The court may extend the protective order described in Subsection (4)(d) if:
- 374 (i) the court finds the defendant incompetent to proceed without a substantial
375 probability that the defendant will become competent in the foreseeable future;
- 376 (ii) the prosecutor or another individual indicates to the court that the prosecutor or
377 other individual will seek civil commitment of the defendant under Section
378 77-15-6; and
- 379 (iii) the court orders the records be maintained and used only for the purposes of
380 examining the defendant in connection with the petition for civil commitment.
- 381 (g) An order for a competency evaluation may not contain an order for any other inquiry
382 into the mental state of the defendant that is not described in this Subsection (4).
- 383 (5) Pending a competency evaluation, unless the court or the department directs otherwise,
384 the defendant shall be retained in the same custody or status that the defendant was in at
385 the time the examination was ordered.
- 386 (6) In the conduct of a competency evaluation and in a report to the court, a forensic
387 evaluator shall consider and address, in addition to any other factors determined to be
388 relevant by the forensic evaluator:
- 389 (a) the impact of the defendant's mental illness or intellectual disability on the
390 defendant's present ability to:
- 391 (i) rationally and factually understand the criminal proceedings against the defendant;
392 and
- 393 (ii) consult with the defendant's legal counsel with a reasonable degree of rational
394 understanding in order to assist in the defense;
- 395 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
396 shall consider, as applicable the defendant's present ability to:
- 397 (i) understand the charges or allegations against the defendant;
398 (ii) communicate facts, events, and states of mind;
399 (iii) understand the range of possible penalties associated with the charges or
400 allegations against the defendant;
- 401 (iv) engage in reasoned choice of legal strategies and options;
- 402 (v) understand the adversarial nature of the proceedings against the defendant;

- 403 (vi) manifest behavior sufficient to allow the court to proceed; and
404 (vii) testify relevantly, if applicable; and
405 (c) whether the defendant is exhibiting false or exaggerated physical or psychological
406 symptoms relevant to the defendant's capacity to stand trial.
- 407 (7) Upon a determination that the defendant is incompetent to proceed, the forensic
408 evaluator shall indicate in the report to the court:
- 409 (a) the factors that contribute to the defendant's incompetency, including the nature of
410 the defendant's mental illness or intellectual disability, if any, and its relationship to
411 the factors contributing to the defendant's incompetency;
- 412 (b) whether there is a substantial probability that:
- 413 (i) restoration treatment may bring the defendant to competency to stand trial in the
414 foreseeable future; or
415 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 416 (c) whether the defendant would benefit from restoration treatment; and
417 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),
418 an explanation of the reason for the determination and a summary of the treatment
419 provided to the defendant in the past.
- 420 (8)(a)(i) A forensic evaluator shall provide an initial report to the court and the
421 prosecuting and defense attorneys within 30 days of the receipt of the court's
422 order.
- 423 (i) The report shall inform the court of the examiner's opinion concerning the
424 competency of the defendant to stand trial.
- 425 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in
426 Subsection (8)(a), the forensic evaluator shall give written notice to the court.
- 427 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)
428 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days
429 after the day on which the forensic evaluator received the court's order to conduct
430 a competency evaluation and file a report.
- 431 (iii) [The] Except as provided in Subsection (8)(b)(iv), the court may further extend
432 the deadline for completion of the evaluation and report if the court determines
433 that there is good cause for the extension.
- 434 (iv) If an extension is sought because the forensic evaluator has been appointed to
435 examine an inmate for competency to be executed or has been called to testify at a
436 competency hearing described in Section 77-19-204, the court shall further extend

437 the deadline to complete the report on the defendant's competency to stand trial.
438 [~~(iv)~~] (v) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic
439 evaluator shall file the report as soon as reasonably possible.

440 (9) Any written report submitted by a forensic evaluator shall:

- 441 (a) identify the case ordered for evaluation by the case number;
- 442 (b) describe the procedures, techniques, and tests used in the examination and the
443 purpose or purposes for each, the time spent by the forensic evaluator with the
444 defendant for purposes of the examination, and the compensation to be paid to the
445 evaluator for the report;
- 446 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
447 factor described in Subsection (6); and
- 448 (d) identify the sources of information used by the forensic evaluator and present the
449 basis for the forensic evaluator's clinical findings and opinions.

450 (10)(a) Any statement made by the defendant in the course of any competency
451 examination, whether the examination is with or without the consent of the
452 defendant, any testimony by a forensic evaluator based upon the statement, and any
453 other fruits of the statement may not be admitted in evidence against the defendant in
454 any criminal proceeding except on an issue respecting mental condition on which the
455 defendant has introduced evidence, unless the evidence is relevant to a determination
456 of the defendant's competency.

457 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
458 defendant of the limits of confidentiality as provided under Subsection (10)(a).

459 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
460 competency hearing. The hearing shall be held not less than five and not more than
461 15 days after the day on which the court received the forensic evaluators' reports,
462 unless for good cause the court sets a later date.

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

465 (c) The court may call any forensic evaluator to testify at the hearing who is not called
466 by the parties. If the court calls a forensic evaluator, counsel for the parties may
467 cross-examine the forensic evaluator.

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

- 471 (ii) A conflict in the opinions of the forensic evaluators does not require the
472 appointment of an additional forensic evaluator unless the court finds good cause
473 for the appointment.
- 474 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
475 that party shall:
- 476 (A) select the additional forensic evaluator; and
477 (B) pay the costs of the additional forensic evaluator.
- 478 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
479 a preponderance of the evidence, finds the defendant incompetent to proceed.
- 480 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 481 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
482 incompetency to give informed consent for medical treatment or for any other
483 purpose, unless specifically set forth in the court order.
- 484 (13) In determining the defendant's competency to stand trial, the court shall consider the
485 totality of the circumstances, including:
- 486 (a) the petition;
487 (b) the defendant's criminal and arrest history;
488 (c) prior mental health evaluations and treatments provided to the court by the defendant;
489 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed
490 in a criminal action unrelated to the charged offense for which the petition is filed;
491 (e) the testimony of lay witnesses, if any;
492 (f) the forensic evaluator's testimony and report;
493 (g) the materials on which the forensic evaluator's report is based; and
494 (h) any other relevant evidence or consideration bearing on the competency of the
495 defendant.
- 496 (14) If the court finds the defendant incompetent to proceed:
- 497 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
498 (i) include findings addressing each of the factors in Subsection (6)(a);
499 (ii) include a transportation order, if necessary;
500 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,
501 psychological, or social work reports submitted to the court relative to the mental
502 condition of the defendant, and any other documents made available to the court
503 by either the defense or the prosecution, pertaining to the defendant's current or
504 past mental condition; and

- 505 (iv) be sent by the court to the department; and
- 506 (b) the prosecuting attorney shall provide to the department:
- 507 (i) the charging document and probable cause statement, if any;
- 508 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
- 509 charged offense; and
- 510 (iii) additional supporting documents.
- 511 (15) The court may not find the defendant incompetent to proceed based solely on a court
- 512 having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6
- 513 in an unrelated criminal action if the court in the unrelated criminal action ordered the
- 514 release more than one year before the day on which the petition described in Subsection
- 515 (13)(a) is filed.
- 516 (16) The court may make any reasonable order to ensure compliance with this section.
- 517 (17) Failure to comply with this section does not result in the dismissal of criminal charges.

518 Section 4. Section **77-15a-101.1**, which is renumbered from Section 77-15a-102 is renumbered

519 and amended to read:

520 **[77-15a-102] 77-15a-101.1 . Definitions for chapter.**

521 As used in this chapter~~], a defendant is "intellectually disabled" if]:~~

- 522 (1) "Intellectually disabled" means:
- 523 (a) ~~[the defendant has]~~significant subaverage general intellectual functioning that [
- 524 ~~results in and]~~exists concurrently with significant deficiencies in adaptive functioning[
- 525 ~~that exist primarily in the areas of reasoning or impulse control, or in both of these~~
- 526 ~~areas]; and~~
- 527 ~~[(2)] (b) the subaverage general intellectual functioning and the significant deficiencies~~
- 528 ~~in adaptive functioning [under Subsection (1)]~~ described in Subsection (1)(a) are both
- 529 manifested [prior to age 22] before the individual is 22 years old.
- 530 (2) "Prescreening psychologist" means a psychologist who:
- 531 (a) is licensed in accordance with Title 58, Chapter 61, Psychologist Licensing Act; and
- 532 (b) has at least five years of experience in testing, evaluating, and diagnosing individuals
- 533 as intellectually disabled.

534 Section 5. Section **77-15a-101.5**, which is renumbered from Section 77-15a-101 is renumbered

535 and amended to read:

536 **[77-15a-101] 77-15a-101.5 . Intellectually disabled defendant not subject to a**

537 **sentence of death.**

538 ~~[(1)]~~ A defendant who is found by the court to be intellectually disabled ~~[as defined in~~

539 Section ~~77-15a-102~~ is not subject to ~~[the death penalty]~~ a sentence of death.
 540 ~~[(2) A defendant who does not meet the definition of intellectually disabled under Section~~
 541 ~~77-15a-102 is not subject to the death penalty if:]~~
 542 ~~[(a) the defendant has significantly subaverage general intellectual functioning that~~
 543 ~~exists concurrently with significant deficiencies in adaptive functioning;]~~
 544 ~~[(b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and]~~
 545 ~~[(c) the state intends to introduce into evidence a confession by the defendant which is~~
 546 ~~not supported by substantial evidence independent of the confession.]]~~

547 Section 6. Section **77-15a-104** is amended to read:

548 **77-15a-104 . Hearing -- Notice -- Stay of proceeding -- Examinations of defendant**
 549 **-- Scope of examination -- Report -- Procedures.**

550 ~~[(1)(a) If a defendant proposes to offer evidence concerning or argue that he qualifies~~
 551 ~~for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the~~
 552 ~~defendant shall file and serve the prosecuting attorney with written notice of his~~
 553 ~~intention as soon as practicable, but not fewer than 60 days before trial.]]~~

554 ~~[(b) If the defendant wishes to claim the exemption provided in Subsection~~
 555 ~~77-15a-101(2), the defendant shall file and serve the prosecuting attorney with~~
 556 ~~written notice of his intention as soon as practicable, but not fewer than 60 days~~
 557 ~~before trial.]]~~

558 ~~[(2) When notice is given under Subsection (1), the court raises the issue, or a motion is~~
 559 ~~filed regarding Section 77-15a-101, the court may stay all proceedings in order to~~
 560 ~~address the issue.]]~~

561 (1) If a prosecuting attorney files a notice of intent to seek a sentence of death, and unless
 562 the defendant objects to the appointment, the court shall appoint a prescreening
 563 psychologist to determine the defendant's intelligence quotient using the procedures for
 564 determining intelligence quotient that are community, nationally, and culturally accepted
 565 at the time of appointment.

566 (2)(a) If a defendant objects to the appointment of a prescreening psychologist as
 567 described in Subsection (1), the defendant waives the right to assert that the
 568 defendant is intellectually disabled for purposes of establishing that the defendant is
 569 not subject to a sentence of death.

570 (b) The court shall make a determination on the record as to whether the defendant's
 571 waiver under Subsection (2)(a) is knowing and voluntary.

572 (c) A waiver under this Subsection (2) does not preclude the defendant from offering

573 evidence of the defendant's mental capacity as mitigation evidence in the sentencing
574 proceeding described in Section 76-3-207.

575 (3) Within 30 days after that day on which the defendant is tested by an appointed
576 prescreening psychologist, the prescreening psychologist shall submit a written report to
577 the court on the prescreening psychologist's determination of the defendant's intelligence
578 quotient.

579 (4)(a) If a prescreening psychologist determines that the defendant's intelligence quotient
580 is higher than 75:

581 (i) the defendant shall present any evidence of a lower intelligence quotient within 30
582 days after the day on which the prescreening psychologist submits the report
583 described in Subsection (3); and

584 (ii) except as provided in Subsection (4)(c), the court shall make the prescreening
585 psychologist's report available to the defendant but seal the report as to all other
586 persons.

587 (b) If a prescreening psychologist determines that the defendant's intelligence quotient is
588 higher than 75 and the defendant presents no contrary evidence under Subsection
589 (4)(a)(i):

590 (i) no further examination of the defendant may be ordered under this section; and

591 (ii) the court shall enter an order stating that a sentence of death is a sentencing
592 option in the case before the court.

593 (c) The court shall release the prescreening psychologist's report on the motion of any
594 party if the defendant introduces the report in the case before or after conviction or in
595 any related collateral proceeding.

596 (d) A determination by a prescreening psychologist that the defendant's intelligence
597 quotient is higher than 75 does not preclude the defendant from introducing evidence
598 of the defendant's mental capacity at the sentencing proceeding described in Section
599 76-3-207.

600 (5) If the prescreening psychologist determines that the defendant's intelligence quotient is
601 75 or less, or the defendant presents evidence of a lower intelligence quotient as
602 described in Subsection (4)(a)(i):

603 (a) the court may stay all proceedings in order to address the issue of whether the
604 defendant is intellectually disabled; and

605 (b) the court shall order an examination of the defendant as described in Subsection (6).

606 [(3)] (6)(a) The court shall order the Department of Health and Human Services to

607 appoint at least two mental health experts to examine the defendant and report to the
608 court.

609 (b) ~~[The experts]~~ An examiner described in Subsection (6)(a):

610 (i) may not be involved in the current treatment of the defendant; and

611 (ii) shall have expertise in intellectual disability assessment.

612 ~~[(b)]~~ (c) Upon appointment of ~~[the experts]~~ the examiners, the defendant, or other party as
613 directed by the court, shall provide information and materials to the examiners
614 relevant to a determination ~~[of the defendant's intellectual disability]~~ of whether the
615 defendant is intellectually disabled, including:

616 (i) copies of the charging document~~[-]~~ ;

617 (ii) arrest or incident reports pertaining to the charged offense~~[-]~~ ;

618 (iii) known criminal history information~~[-, and-]~~ ; and

619 (iv) known prior mental health evaluations and treatments.

620 ~~[(e)]~~ (d) The court may make the necessary orders to provide the information listed in
621 Subsection ~~[(3)(b)]~~ (6)(c) to the examiners.

622 ~~[(d)]~~ (e) The court may provide in ~~[its]~~ the court's order appointing the examiners that
623 custodians of mental health records pertaining to the defendant shall provide those
624 records to the examiners without the need for consent of the defendant or further
625 order of the court.

626 ~~[(e)]~~ (f) ~~[Prior to]~~ Before examining the defendant, ~~[examiners]~~ an examiner shall
627 specifically advise the defendant of the limits of confidentiality as provided under
628 Section 77-15a-106.

629 ~~[(4)]~~ (7) During any examinations under Subsection ~~[(3)]~~ (6), and unless the court directs
630 otherwise, the defendant shall be retained in the same custody or status ~~[he]~~ the defendant
631 was in at the time the examination was ordered.

632 ~~[(5)]~~ (8) ~~[The experts]~~ An examiner described in Subsection (6)(a) shall, in the conduct of [
633 ~~their examinations and in their reports]~~ the examiner's examinations and reports to the
634 court, consider and address:

635 (a) whether the defendant is intellectually disabled~~[-as defined in Section 77-15a-102];~~
636 and

637 ~~[(b)]~~ the degree of any intellectual disability the expert finds to exist;

638 ~~[(e)]~~ whether the defendant is intellectually disabled as specified in Subsection
639 77-15a-101(2); and]

640 ~~[(d)]~~ (b) the degree of any intellectual disability the ~~[expert]~~ examiner finds to exist.

- 641 ~~[(6)]~~ (9)(a) ~~[The experts examining the defendant]~~ An examiner shall provide ~~[written~~
642 ~~reports]~~ a written report to the court, the prosecution, and the defense within 60 days [
643 ~~of the receipt of]~~ after the day on which the examiner receives the court's order, unless
644 the ~~[expert]~~ examiner submits to the court a written request for additional time in
645 accordance with Subsection ~~[(6)(e)]~~ (9)(c).
- 646 (b) The ~~[reports]~~ written report shall provide, to the court and to prosecution and defense
647 counsel, the ~~[examiners']~~ examiner's written opinions concerning ~~[the intellectual~~
648 ~~disability of the defendant]~~ whether the defendant is intellectually disabled.
- 649 (c) If an examiner requests of the court additional time, the examiner shall provide the
650 report to the court and counsel within 90 days ~~[from the receipt of the court's order~~
651 ~~unless, for good cause shown,]~~ after the day on which the examiner receives the
652 court's order, unless the court authorizes, for good cause shown, an additional period
653 of time to complete the examination and provide the report.
- 654 ~~[(7)]~~ (10) Any written report submitted by an ~~[expert]~~ examiner under Subsection (9) shall:
655 (a) identify the specific matters referred for evaluation;
656 (b) describe the procedures, techniques, and tests used in the examination and the
657 purpose or purposes for each;
658 (c) state the ~~[expert's]~~ examiner's clinical observations, findings, and opinions; and
659 (d) identify the sources of information used by the ~~[expert]~~ examiner and present the
660 basis for the ~~[expert's]~~ examiner's clinical findings and opinions.
- 661 ~~[(8)]~~ (11) Within 30 days after ~~[receipt of]~~ receiving the report from the Department of
662 Health and Human Services, but not later than five days before hearing, or at any other
663 time the court directs, the prosecuting attorney shall file and serve upon the defendant a
664 notice of witnesses the prosecuting attorney proposes to call in rebuttal.
- 665 ~~[(9)]~~ (12)(a) Except pursuant to Section 77-15a-105, this chapter does not prevent any
666 party from producing any other testimony as to the ~~[mental condition]~~ intellectual or
667 adaptive functioning of the defendant.
- 668 (b) Expert witnesses who are not appointed by the court are not entitled to compensation
669 under Subsection ~~[(10)]~~ (13).
- 670 ~~[(10)]~~ (13)(a) ~~[Expenses]~~ The Department of Health and Human Services shall pay the
671 expenses of examinations of the defendant ordered by the court under this section [
672 ~~shall be paid by the Department of Health and Human Services].~~
- 673 (b) ~~[Travel]~~ The Department of Health and Human Services shall charge travel expenses
674 associated with any court-ordered examination that are incurred by the defendant [

675 shall be charged by the Department of Health and Human Services] to the county
676 where prosecution is commenced.

677 ~~[(11)]~~ (14)(a)(i) When the report is received, the court shall set a date for a hearing
678 that is within a reasonable time before jury selection to determine if the exemption
679 under Section ~~[77-15a-101]~~ 77-15a-101.5 applies. ~~[The hearing shall be held and~~
680 ~~the judge shall make the determination within a reasonable time prior to jury~~
681 ~~selection.]~~

682 (ii) The court shall make a determination described in Subsection (14)(a)(i) within a
683 reasonable time before jury selection.

684 (b) Prosecution and defense counsel may subpoena to testify at the hearing any person or
685 organization appointed by the Department of Health and Human Services to conduct
686 the examination and any independent examiner.

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

689 (ii) If the court calls an examiner, counsel for the parties may cross-examine that
690 examiner.

691 ~~[(12)]~~ (15)(a) A defendant is presumed not to be intellectually disabled unless the court,
692 by a preponderance of the evidence, finds the defendant to be intellectually disabled.

693 (b) The burden of proof is upon the proponent of intellectual disability at the hearing.

694 ~~[(b)]~~ (c) A finding of intellectual disability does not operate as an adjudication of
695 intellectual disability for any purpose other than exempting the [person] defendant
696 from a sentence of death in the case before the court.

697 ~~[(13)(a) The defendant is presumed not to possess the mental deficiencies listed in~~
698 ~~Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds~~
699 ~~that the defendant has significant subaverage general intellectual functioning that~~
700 ~~exists concurrently with significant deficiencies in adaptive functioning and that this~~
701 ~~functioning was manifested prior to age 22. The burden of proof is upon the~~
702 ~~proponent of that proposition.]~~

703 ~~[(b) If the court finds by a preponderance of the evidence that the defendant has~~
704 ~~significant subaverage general intellectual functioning that exists concurrently with~~
705 ~~significant deficiencies in adaptive functioning and that this functioning was~~
706 ~~manifested prior to age 22, then the burden is upon the state to establish that any~~
707 ~~confession by the defendant which the state intends to introduce into evidence is~~
708 ~~supported by substantial evidence independent of the confession.]~~

709 ~~[(14)]~~ (16)(a) If the court finds the defendant is intellectually disabled, ~~[it]~~ the court shall
 710 issue an order:

711 (i) containing findings of fact and conclusions of law, and addressing each of the
 712 factors in Subsections ~~[(5)(a)]~~ (8)(a) and (b); and

713 (ii) stating that ~~[the death penalty]~~ a sentence of death is not a sentencing option in the
 714 case before the court.

715 ~~[(b) If the court finds by a preponderance of the evidence that the defendant possesses~~
 716 ~~the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to~~
 717 ~~establish that any confession is supported by substantial evidence independent of the~~
 718 ~~confession, the state may proceed with its case and:]~~

719 ~~[(i) introduce the confession into evidence, and the death penalty will not be a~~
 720 ~~sentencing option in the case; or]~~

721 ~~[(ii) not introduce into evidence any confession or the fruits of a confession that the~~
 722 ~~court has found is not supported by substantial evidence independent of the~~
 723 ~~confession, and the death penalty will be a sentencing option in the case.]~~

724 ~~[(e)]~~ (b)(i) A finding by the court regarding whether the defendant qualifies for an
 725 exemption under Section ~~[77-15a-101]~~ 77-15a-101.5 is a final determination of
 726 that issue for purposes of this chapter.

727 (ii) ~~[The following questions]~~ Whether the defendant is intellectually disabled for
 728 purposes of this chapter may not be submitted to the jury by instruction, special
 729 verdict, argument, or other means.~~[:]~~

730 ~~[(A) whether the defendant is intellectually disabled for purposes of this chapter;~~
 731 ~~and]~~

732 ~~[(B) whether the defendant possesses the mental deficiencies specified in~~
 733 ~~Subsection 77-15a-101(2).]~~

734 (iii) This chapter does not prevent the defendant from submitting evidence of
 735 intellectual disability or other mental deficiency to establish a mental condition as
 736 a mitigating circumstance under Section 76-3-207.

737 ~~[(15) A ruling by the court that the defendant is exempt from the death penalty may be~~
 738 ~~appealed by the state pursuant to Section 77-18a-1.]~~

739 ~~[(16)]~~ (17) Failure to comply with this section does not result in the dismissal of criminal
 740 charges.

741 Section 7. Section **77-15a-105** is amended to read:

742 **77-15a-105 . Defendant's wilful failure to cooperate -- Expert testimony**

743 **regarding intellectual disability is barred.**

744 (1) [~~If the defendant files notice, raises the issue, or intends to present evidence or make an~~
745 ~~argument that the defendant is exempt from the death penalty~~] If the defendant presents
746 evidence or makes an argument that the defendant is exempt from a sentence of death
747 under this chapter, the defendant shall make himself or herself available and fully
748 cooperate in any examination by mental health experts appointed by the Department of
749 Health and Human Services and any other independent examiners for the defense or the
750 prosecution.

751 (2) If the defendant wilfully fails to make himself or herself available and fully cooperate in
752 the examination, and that failure is established to the satisfaction of the court, the
753 defendant is barred from presenting expert testimony relating to any exemption from [
754 ~~the death penalty~~] a sentence of death under this chapter.

755 Section 8. Section **77-18a-1** is amended to read:

756 **77-18a-1 . Appeals -- When proper.**

757 (1) A defendant may, as a matter of right, appeal from:

- 758 (a) a final judgment of conviction, whether by verdict or plea;
- 759 (b) an order made after judgment that affects the substantial rights of the defendant;
- 760 (c) an order adjudicating the defendant's competency to proceed further in a pending
761 prosecution;[-or]
- 762 (d) an order denying bail under Chapter 20, Bail[-] ; or
- 763 (e) an order finding the defendant is not intellectually disabled after an examination and
764 hearing as described in Section 77-15a-104.

765 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek
766 discretionary appellate review of any interlocutory order.

767 (3) The prosecution may, as a matter of right, appeal from:

- 768 (a) a final judgment of dismissal, including a dismissal of a felony information following
769 a refusal to bind the defendant over for trial;
- 770 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
771 evidence has substantially impaired the prosecution's case;
- 772 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 773 (d) an order arresting judgment or granting a motion for merger;
- 774 (e) an order terminating the prosecution because of a finding of double jeopardy or
775 denial of a speedy trial;
- 776 (f) an order granting a new trial;

- 777 (g) an order holding a statute or any part of it invalid;
- 778 (h) an order adjudicating the defendant's competency to proceed further in a pending
779 prosecution;
- 780 (i) an order finding, [~~pursuant to Title 77, Chapter 19, Part 2, Competency for Execution]~~
781 in accordance with Chapter 19, Part 2, Competency for Execution, that an inmate
782 sentenced to death is incompetent to be executed;
- 783 (j) an order holding that a defendant is exempt from a sentence of death under Section
784 77-15a-104;
- 785 [~~(j)~~] (k) an order reducing the degree of offense pursuant to Section 76-3-402;
- 786 [~~(k)~~] (l) an illegal sentence; or
- 787 [~~(l)~~] (m) an order dismissing a charge pursuant to Subsection 76-2-309(3).
- 788 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
789 discretionary appellate review of any interlocutory order entered before jeopardy
790 attaches.

791 Section 9. Section **77-19-6** is amended to read:

792 **77-19-6 . Sentence of death -- Warrant -- Delivery of warrant -- Determination of**
793 **execution time.**

794 [~~(1)(a) When judgment of death is rendered, a warrant, signed by the judge and attested~~
795 ~~by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of~~
796 ~~the county where the conviction is had.]~~

797 (1)(a) When a judgment of death is rendered for a defendant, the sentencing court shall:

798 (i) immediately transmit a statement of the conviction and sentence and a summary of
799 the evidence given at trial to the Board of Pardons and Parole; and

800 (ii) draw and deliver a warrant, signed by the judge and attested by the clerk under
801 seal of the court, to the sheriff of the county where the conviction occurred.

802 (b) The sheriff shall deliver the warrant and a certified copy of the judgment to the
803 executive director of the Department of Corrections, or the executive director's
804 designee, at the time of delivering the defendant to the custody of the Department of
805 Corrections.

806 (2)(a) [~~The] Subject to Subsection (2)(b), the warrant shall state the conviction, the [~~
807 ~~judgment] sentence, the method of execution, and the [appointed day the judgment is~~
808 ~~to be executed, which may not be fewer than 30 days nor more than 60 days from the~~
809 ~~date of issuance of the warrant, and may not be]~~ day on which the sentence is to be
810 executed.

- 811 (b) The day on which a sentence is to be executed may not be:
 812 (i) sooner than 30 days after, or later than 60 days after, the day on which the
 813 sentencing court issues the warrant; or
 814 (ii) a Sunday, Monday, or a legal holiday[~~, as defined in~~] under Section 63G-1-301.
- 815 (3) The Department of Corrections shall determine the hour, within the appointed day, at
 816 which the [judgment] sentence is to be executed.
- 817 Section 10. Section **77-19-8** is amended to read:
 818 **77-19-8 . Sentence of death, when suspended, and by whom.**
- 819 (1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor
 820 or the Board of Pardons and Parole, may not stay or suspend the execution of a [
 821 judgment] sentence of death.
- 822 (2)(a) A court [~~of competent jurisdiction~~] shall issue a temporary stay of [judgment] a
 823 sentence of death when:
- 824 (i) a timely motion for a new trial is filed;
 825 [~~(i)~~] (ii) the judgment is appealed;
 826 [~~(ii)~~] (iii) the judgment is automatically reviewed in accordance with Subsection
 827 76-3-207(10);
 828 [~~(iii)~~] (iv) the [person] individual sentenced to death files:
 829 (A) a first petition for postconviction relief [after the direct appeal] under Title
 830 78B, Chapter 9, Postconviction Remedies Act; or
 831 (B) a timely notice of appeal from a final order of a first petition for
 832 postconviction relief;
 833 [~~(iv)~~] (v) the [person sentenced to death requests] individual sentenced to death is
 834 appointed counsel under Subsection [78B-9-202(2)(a)] 78B-8-202(1) to represent
 835 the [person] individual in a first action for postconviction relief under Title 78B,
 836 Chapter 9, Postconviction Remedies Act; or
 837 [~~(v)~~] (vi) counsel enters an appearance to represent the [person] individual sentenced
 838 to death in a first action for postconviction relief under Title 78B, Chapter 9,
 839 Postconviction Remedies Act.
- 840 (b) A court may grant a temporary stay to determine competency to be executed in
 841 accordance with Part 2, Competency for Execution.
- 842 [~~(b)~~] (c) A court may not issue a temporary stay of [judgment] a sentence of death when
 843 the [person] individual sentenced to death files a petition for postconviction relief
 844 under Title 78B, Chapter 9, Postconviction Remedies Act, or a timely notice of

845 appeal from a final order on the petition, after a first petition of postconviction relief
 846 has been denied or dismissed, unless the court first finds all of the following:
 847 (i) the claims would not be barred under Section 78B-9-106;
 848 (ii) the claims are potentially meritorious; and
 849 (iii) the petition or appeal may not be reasonably disposed of before the execution
 850 date.

851 ~~[(e)]~~ (d)(i) The executive director of the Department of Corrections~~[or a designee~~
 852 under Section 77-19-202] , or the executive director's designee, may temporarily
 853 suspend the execution under Section 77-19-202 if the [person] individual
 854 sentenced to death appears to be incompetent or pregnant.

855 (ii) A temporary suspension under Subsection ~~[(2)(e)(i)]~~ (2)(d)(i) shall end if the [
 856 person] individual is determined to be:
 857 (A) competent;
 858 (B) not pregnant; or
 859 (C) no longer incompetent or pregnant.

860 (3) If a court issued a temporary stay under Subsection (2)(a)(iii), the court shall vacate the
 861 stay when the automatic review of the defendant's sentence is concluded.

862 (4) If a court issued a temporary stay under Subsection (2)(a)(v) or (vi), the court shall
 863 vacate the stay if a petition for postconviction relief under Title 78B, Chapter 9,
 864 Postconviction Remedies Act, is not filed before the statute of limitations passes under
 865 Section 78B-9-107.

866 (5) Except as provided in Subsection (3) or (4), a stay issued by a court under Subsection (2)
 867 automatically expires upon the entry of a final order disposing of the action that
 868 triggered the stay.

869 (6) If a stay is vacated or expires before the day on which the sentence is to be executed and
 870 the sentence remains in force, the issuance of a new order of execution and warrant is
 871 not required to execute the sentence.

872 ~~[(3)(a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the~~
 873 ~~appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction~~
 874 ~~Remedies Act is concluded.]~~

875 ~~[(b)]~~ (7) [A request for] The appointment of counsel under Section 78B-9-202 does not
 876 constitute an application for postconviction or other collateral review and does not toll
 877 the statute of limitations under Section 78B-9-107.

878 Section 11. Section **77-19-9** is amended to read:

879 **77-19-9 . Sentence of death not executed -- Order for execution.**

880 [~~(1) If for any reason a judgment of death has not been executed and remains in force, the~~
 881 ~~court where the conviction was had, on application of the prosecuting attorney, shall~~
 882 ~~order the defendant to be brought before it or, if the defendant is at large, issue a warrant~~
 883 ~~for the defendant's apprehension.]~~

884 [~~(2) When the defendant is brought before the court, it shall inquire into the facts and, if no~~
 885 ~~legal reason exists against the execution of judgment, the court shall make an order~~
 886 ~~requiring the executive director of the Department of Corrections or the executive~~
 887 ~~director's designee to ensure that the judgment is executed on a specified day, which~~
 888 ~~may not be fewer than 30 nor more than 60 days after the court's order, and may not be a~~
 889 ~~Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall~~
 890 ~~also draw and have delivered another warrant under Section 77-19-6.]~~

891 (1) If for any reason a sentence of death has not been executed and remains in force, the
 892 attorney general, or the county or district attorney in the county or district in which the
 893 conviction occurred, may apply for an order of execution from the court in which the
 894 conviction occurred.

895 (2)(a) Within 21 days after the application is filed, the court shall:

896 (i) subject to Subsections (2)(b) and (c), enter an order requiring the executive
 897 director of the Department of Corrections, or the executive director's designee, to
 898 ensure that the sentence is executed on a specified day if no legal reason exists
 899 against the execution of a sentence for death; and

900 (ii) draw and deliver another warrant for the execution of the sentence for death in
 901 accordance with Section 77-19-6.

902 (b) Except as provided in Subsection (2)(c), the specified day described in Subsection
 903 (2)(a)(i) may not be:

904 (i) sooner than 30 days after, or later than 60 days after, the day on which the court
 905 enters the order for execution; or

906 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.

907 (c) If the defendant seeks review of a finding of competency by the Supreme Court and
 908 the Supreme Court does not set the finding of competency aside, the specified day
 909 described in Subsection (2)(a)(i) may not be:

910 (i) sooner than 15 days after, or later than 30 days after, the day on which the court
 911 enters the order for execution; and

912 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.

- 913 (d) No legal reason exists under Subsection (2)(a)(i) if:
 914 (i) there is no stay in effect for the sentence; and
 915 (ii) there is no procedural defect in the warrant application process.
 916 (3) The Department of Corrections shall determine the hour, within the [appointed] specified
 917 day, at which the [judgment] sentence is to be executed.

918 Section 12. Section **77-19-10** is amended to read:

919 **77-19-10 . Sentence of death -- Location and procedures for execution.**

- 920 (1) The executive director of the Department of Corrections, or [a] the executive director's
 921 designee, shall ensure that the method of [judgment] a sentence of death specified in the
 922 warrant or as required under Section 77-18-113 is carried out at a secure correctional
 923 facility operated by the department and at an hour determined by the department on the
 924 date specified in the warrant.
 925 (2) When the [judgment] sentence of death is to be carried out by lethal intravenous
 926 injection, the executive director of the department or a designee shall select two or more
 927 persons trained in accordance with accepted medical practices to administer intravenous
 928 injections, who shall each administer a continuous intravenous injection, consisting of
 929 one or more substances of a type and amount that is sufficiently effective to cause death
 930 without a substantial risk of severe pain.
 931 (3) If the [judgment] sentence of death is to be carried out by firing squad under Subsection
 932 77-18-113(2), (3), or (4) the executive director of the department or a designee shall
 933 select a five-person firing squad of peace officers.
 934 (4) Compensation for persons administering intravenous injections and for members of a
 935 firing squad under Subsection 77-18-113(2), (3), or (4) shall be in an amount determined
 936 by the director of the Division of Finance.
 937 (5) Death under this section shall be certified by a physician.
 938 (6) The department shall adopt and enforce rules governing procedures for the execution of [
 939 judgments] sentences of death.

940 Section 13. Section **77-19-201** is repealed and reenacted to read:

941 **Part 2. Issues of Pregnancy and Competency for Execution**

942 **77-19-201 . Definitions for part.**

943 As used in this part:

- 944 (1) "Incompetent to be executed" means that, due to a mental condition, the individual
 945 sentenced to death lacks a rational understanding that the individual is to be executed as
 946 punishment for the individual's commission of the crime of murder.

947 (2) "Sentencing court" means the court in which the sentence of death was rendered.

948 Section 14. Section **77-19-202** is repealed and reenacted to read:

949 **77-19-202 . Notification of pregnancy or incompetency of inmate sentenced to**
950 **death.**

951 (1) As used in this section, "executive director" means the executive director, or the
952 executive director's designee, of the Department of Corrections.

953 (2)(a) The executive director shall immediately give written notice to the sentencing
954 court, the prosecuting attorney, the attorney general, and defense counsel for an
955 inmate if:

956 (i) the inmate has been sentenced to death;

957 (ii) all state and federal appeals or review attacking the sentence have been exhausted;

958 (iii) an active warrant for execution has been signed and an execution date has been
959 set as described in Sections 77-19-6 and 77-19-9; and

960 (iv) the executive director has good reason to believe that:

961 (A) the inmate is pregnant; or

962 (B) the inmate's competency to be executed under this chapter should be
963 addressed by the sentencing court.

964 (b) If the sentencing court receives a notice under Subsection (2)(a), the execution of the
965 sentence of death shall be stayed pending further order of the court.

966 (3) If the sentencing court receives a notice under Subsection (2)(a) that there is good
967 reason for the sentencing court to address an inmate's competency to be executed, the
968 sentencing court shall order that the mental condition of the inmate be examined under
969 the provisions of Section 77-19-204, including holding a hearing at which the state and
970 the inmate may appear as parties.

971 Section 15. Section **77-19-202.5** is enacted to read:

972 **77-19-202.5 . Procedures for pregnant inmate sentenced to death.**

973 (1) If the sentencing court finds that an inmate sentenced to death is pregnant, the
974 sentencing court shall:

975 (a) immediately transmit a certificate of the finding to the Department of Corrections
976 and the Board of Pardons and Parole; and

977 (b) issue an order staying the execution of the sentence of death during the pregnancy.

978 (2) When the sentencing court finds that an inmate sentenced to death is no longer
979 pregnant, the sentencing court shall:

980 (a) immediately transmit a certificate of the finding to the Board of Pardons and Parole;

981 and
 982 (b) except as provided in Subsection 77-19-8(6), draw and deliver another warrant in
 983 accordance with Section 77-19-6, with a copy of the certificate of the finding.

984 (3)(a) Subject to Subsection (3)(b), the warrant shall state the day on which the sentence
 985 is to be executed.

986 (b) The day on which the sentence is executed may not be:

987 (i) sooner than 30 days after, or later than 60 days after, the day on which the
 988 sentencing court issues the warrant; or

989 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.

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

991 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**

992 **Contents.**

993 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,
 994 a petition under Subsection (2) may be filed in the district court of the county where the
 995 inmate is confined.

996 (2) The petition shall:

997 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
 998 believe the inmate is incompetent to be executed; and

999 (b) contain a specific recital of the facts, observations, and conversations with the inmate [
 1000 ~~that form the basis for the petition]~~ that give rise to the belief that the inmate may not
 1001 be competent to be executed.

1002 (3) The petition may be:

1003 (a) based upon knowledge or information and belief~~[and may be]~~ ; and

1004 (b) filed by the inmate alleged to be incompetent, legal counsel for the inmate, or by an
 1005 attorney representing the state.

1006 (4)(a) A motion for an examination of the inmate that is filed fewer than 21 days before
 1007 the day on which the inmate is scheduled to be executed is untimely.

1008 (b) A court may not consider a motion that is untimely under Subsection (4)(a) unless
 1009 the motion is accompanied by:

1010 (i) at least one affidavit from a licensed physician or licensed psychologist who has
 1011 examined the inmate and determined that, in the physician's or psychologist's
 1012 opinion, the inmate is not competent to proceed; and

1013 (ii) a statement that establishes good cause for the failure to file a motion for
 1014 examination in a timely manner.

1015 ~~[(4)]~~ (5) Before ruling on a petition filed by an inmate or ~~[his]~~ the inmate's counsel alleging
 1016 that the inmate is incompetent to be executed, the court shall give the state and the
 1017 Department of Corrections an opportunity to respond to the allegations of incompetency.

1018 (6) The court shall prioritize any proceeding regarding the examination of the inmate for
 1019 competency to be executed so that the proceeding is completed before the scheduled
 1020 execution date.

1021 (7) When a petition is filed under this section, a stay of a scheduled execution may only be
 1022 granted if there are circumstances beyond the court's control that prevent the court from
 1023 ruling on the petition before the scheduled execution date.

1024 ~~[(5) If a petition is filed after an inmate has previously been found competent under either~~
 1025 ~~this chapter or under Chapter 15, Defendant's Competency to Proceed, no further~~
 1026 ~~hearing on competency may be granted unless the successive petition:]~~

1027 ~~[(a) alleges with specificity a substantial change of circumstances subsequent to the~~
 1028 ~~previous determination of competency; and]~~

1029 ~~[(b) is sufficient to raise a significant question about the inmate's competency to be~~
 1030 ~~executed.]~~

1031 Section 17. Section **77-19-203.5** is enacted to read:

1032 **77-19-203.5 . Successive petitions on competency of an inmate sentenced to death.**

1033 (1) If a petition described in Section 77-19-203 is filed after an inmate has previously been
 1034 found competent to be executed under this part, the court may not grant a hearing on the
 1035 competency to be executed unless the successive petition:

1036 (a) alleges with specificity a substantial change of circumstances after the previous
 1037 finding of competency by the court;

1038 (b) is sufficient to raise a significant question about the inmate's competency to be
 1039 executed; and

1040 (c) is accompanied by at least one affidavit from a licensed physician or licensed
 1041 psychologist who has:

1042 (i) examined the inmate after the previous finding of competency by the court; and

1043 (ii) determined, in the physician's or psychologist's opinion, that the inmate is not
 1044 competent to be executed due to a substantial change in circumstances.

1045 (2) An affidavit described in Subsection (1)(c):

1046 (a) shall contain new and specific facts that support the opinion of the licensed physician
 1047 or licensed psychologist; and

1048 (b) does not meet the requirements of Subsection (1)(c) if any of the new facts described

1049 in Subsection (2)(a) were known to the defense before the previous finding of the
 1050 court that the inmate was competent to be executed.

1051 (3) In determining whether a successive petition involves a substantial change of
 1052 circumstances under Subsection (1)(a) and raises a significant question under Subsection
 1053 (1)(b), the court may consider evidence given by the state in opposition to the petition.

1054 (4) When a successive petition is filed, a stay of a scheduled execution may only be granted
 1055 if there are circumstances beyond the court's control that prevent the court from ruling
 1056 on the petition before the scheduled execution date.

1057 Section 18. Section **77-19-204** is amended to read:

1058 **77-19-204 . Order for hearing -- Examinations of inmate -- Scope of examination**
 1059 **and report.**

1060 [~~(1) When a court has good reason to believe an inmate sentenced to death is incompetent~~
 1061 ~~to be executed, it shall stay the execution and shall order the Department of Health and~~
 1062 ~~Human Services to examine the inmate and report to the court concerning the inmate's~~
 1063 ~~mental condition.]~~

1064 (1) A court shall order the Department of Health and Human Services to immediately
 1065 examine an inmate sentenced to death and report to the court concerning the inmate's
 1066 mental condition if:
 1067 (a) the court receives notice of a good reason to address the inmate's incompetency to be
 1068 executed under Section 77-19-202;
 1069 (b) a petition is filed with the court that complies with Section 77-19-203 and the court
 1070 has good reason to believe the inmate may be incompetent to be executed; or
 1071 (c) a successive petition is filed with the court that complies with Section 77-19-203.5
 1072 and the court has a significant question about the inmate's competency to be executed.

1073 (2)(a) The inmate subject to examination under Subsection (1) shall be examined by at
 1074 least two mental health experts who are not involved in the inmate's current treatment.

1075 (b) The Department of Corrections shall provide information and materials to the
 1076 examiners relevant to a determination of the inmate's competency to be executed.

1077 (c) The court may provide, in the court's order appointing examiners, that a custodian of
 1078 mental or physical health records pertaining to the inmate shall provide the mental or
 1079 physical health records to the examiners without the need for consent of the
 1080 defendant or any further order of the court.

1081 (3) The inmate shall make himself or herself available and fully cooperate in the
 1082 examination by the Department of Health and Human Services and any other

- 1083 independent examiners for the defense or the state.
- 1084 (4) ~~[The examiners]~~ An examiner shall in the conduct of ~~[their]~~ the examiner's examinations
1085 and in ~~[their]~~ the examiner's reports to the court consider and address, in addition to any
1086 other factors determined to be relevant by the ~~[examiners]~~ examiner:
- 1087 (a) the inmate's awareness of the fact of the inmate's impending execution;
- 1088 (b) the inmate's understanding that the inmate is to be executed for the crime of murder;
- 1089 (c) the nature of the inmate's mental disorder, if any, and its relationship to the factors
1090 relevant to the inmate's competency; and
- 1091 (d) whether psychoactive medication is necessary to maintain or restore the inmate's
1092 competency.
- 1093 (5)(a) ~~[The examiners who are]~~ An examiner who is examining the inmate shall ~~[each~~
1094 ~~provide an initial]~~ provide a report to the court and the attorneys for the state and the
1095 inmate within ~~[60 days of the receipt of the court's order]~~ 30 days after the day on
1096 which the examiner received the court's order for an examination of the inmate.
- 1097 (b) The report described in Subsection (5)(a) shall inform the court of the examiner's
1098 opinion concerning the competency of the inmate to be executed~~[, or, in the~~
1099 ~~alternative, the examiner may inform the court in writing that additional time is~~
1100 ~~needed to complete the report. If the examiner informs the court that additional time~~
1101 ~~is needed, the examiner shall have up to an additional 30 days to provide the report to~~
1102 ~~the court and counsel. The examiner shall provide the report within 90 days from the~~
1103 ~~receipt of the court's order unless, for good cause shown, the court authorizes an~~
1104 ~~additional period of time to complete the examination and provide the report].~~
- 1105 (6)(a) All interviews with the inmate conducted by the examiners shall be videotaped,
1106 unless otherwise ordered by the court for good cause shown.
- 1107 (b) The Department of Corrections shall provide the videotaping equipment and
1108 facilitate the videotaping of the interviews.
- 1109 ~~[(b)]~~ (c) Immediately following the videotaping, the videotape shall be provided to the
1110 attorney for the state, who shall deliver ~~[it]~~ the videotape as soon as practicable to the [
1111 ~~judge]~~ court in whose court the competency determination is pending.
- 1112 ~~[(e)]~~ (d) The court shall grant counsel for the state and for the inmate, and ~~[examiners~~
1113 ~~who are]~~ an examiner who is examining the inmate under this part access to view the
1114 videotape at the court building where the court is located that is conducting the
1115 competency determination under this part.
- 1116 (7) Any written report submitted by an examiner shall:

- 1117 (a) identify the specific matters referred for evaluation;
- 1118 (b) describe the procedures, techniques, and tests used in the examination and the
1119 purpose or purposes for each;
- 1120 (c) state the examiner's clinical observations, findings, and opinions on each issue
1121 referred for examination by the court, and indicate specifically those issues, if any, on
1122 which the examiner could not give an opinion; and
- 1123 (d) identify the sources of information used by the examiner and present the basis for the
1124 examiner's clinical findings and opinions.
- 1125 (8)(a)(i) When ~~[the reports]~~ all reports from examiners are received, the court shall set
1126 a date for a competency hearing~~[- which shall be held within not less than five and
1127 not more than 15 days, unless the court extends the time for good cause.]~~ .
- 1128 (ii) The competency hearing shall be held no sooner than five days after, or later than
1129 15 days after, the day on which the reports are received by the court.
- 1130 (b)(i) Any examiner directed by the Department of Health and Human Services to
1131 conduct the examination may be subpoenaed to provide testimony at the hearing.
- 1132 (ii) If the examiners are in conflict as to the competency of the inmate, all of them
1133 should be called to testify at the hearing if they are reasonably available.
- 1134 (c)(i) The court may call any examiner to testify at the hearing who is not called by
1135 the parties.
- 1136 (ii) An examiner called by the court may be cross-examined by counsel for the
1137 parties.
- 1138 (9)(a)(i) An inmate shall be presumed competent to be executed unless the court, by a
1139 preponderance of the evidence, finds the inmate incompetent to be executed.
- 1140 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 1141 (b) An adjudication of incompetency to be executed does not operate as an adjudication
1142 of the inmate's incompetency to give informed consent for medical treatment or for
1143 any other purpose~~[- unless specifically set forth in the court order].~~
- 1144 (10)(a) If the court finds the inmate incompetent to be executed, ~~[its]~~ the court's order
1145 shall contain findings addressing each of the factors in Subsections (4)(a) through (d).
- 1146 (b) The order finding the inmate incompetent to be executed shall be:
- 1147 (i) delivered to the Department of Health and Human Services[- and shall be] ; and
1148 (ii) accompanied by:
- 1149 ~~[(+)]~~ (A) copies of the reports of the examiners filed with the court pursuant to the
1150 order of examination, if not provided previously;

1151 [(ii)] (B) copies of any of the psychiatric, psychological, or social work reports
 1152 submitted to the court relative to the mental condition of the inmate; and
 1153 [(iii)] (C) any other documents made available to the court by either the defense or
 1154 the state, pertaining to the inmate's current or past mental condition.

1155 (c) A copy of the order finding the inmate incompetent to be executed shall be delivered
 1156 to the Department of Corrections.

1157 Section 19. Section **77-19-204.5** is enacted to read:

1158 **77-19-204.5 . Procedures on finding of competency to be executed.**

1159 (1) If an inmate is found competent to be executed at any time during a proceeding under
 1160 this chapter, the court shall immediately transmit a certificate of the findings to the
 1161 Board of Pardons and Parole and the Department of Corrections.

1162 (2) Upon a finding that the inmate is competent to be executed:

- 1163 (a) any stay imposed by the court is automatically lifted;
 1164 (b) except as provided in Subsection 77-19-8(6), the court shall draw and deliver another
 1165 warrant of execution, with a copy of the certificate of findings, in accordance with
 1166 Section 77-19-6; and
 1167 (c) notwithstanding the expedited review described in Subsection 76-3-207(12)(b), the
 1168 Supreme Court may only stay the execution if a stay is necessary to rule on an appeal
 1169 or a petition for extraordinary relief before the scheduled execution date.

1170 Section 20. Section **77-19-205** is amended to read:

1171 **77-19-205 . Procedures on finding of incompetency to be executed -- Subsequent**
 1172 **hearings -- Notice to attorneys.**

1173 (1)(a)[(i) ~~If after the hearing under Section 77-19-204 the inmate is found to be~~
 1174 ~~incompetent to be executed]~~ If an inmate is found incompetent to be executed after
 1175 the hearing described in Section 77-19-204 and the stay of the execution has not
 1176 been issued, the court shall [continue the stay of execution and the inmate shall
 1177 ~~receive appropriate mental health treatment]~~ issue a stay of the execution.

1178 (b)(i) Upon an inmate being found incompetent to be executed:

- 1179 (A) the court shall immediately transmit a certificate of the findings to the Board
 1180 of Pardons and Parole and the Department of Corrections; and
 1181 (B) the inmate shall receive appropriate mental health treatment.

1182 (ii) Appropriate mental health treatment under Subsection [(1)(a)(i)] (1)(b)(i)(B) does
 1183 not include the forcible administration of psychoactive medication for the sole
 1184 purpose of restoring the inmate's competency to be executed.

- 1185 ~~[(b)]~~ (c) The court shall order the executive director of the Department of Health and
1186 Human Services to provide periodic assessments to the court regarding the inmate's
1187 competency to be executed.
- 1188 ~~[(e)]~~ (d) The inmate shall be held in secure confinement, either at the prison or the State
1189 Hospital, as agreed upon by the executive director of the Department of Corrections
1190 and the executive director of the Department of Health and Human Services.
- 1191 (e) If the inmate remains at the prison, the Department of Health and Human Services
1192 shall consult with the Department of Corrections regarding the inmate's mental health
1193 treatment.
- 1194 (2)(a) ~~[The examiner or examiners]~~ An examiner designated by the executive director of
1195 the Department of Health and Human Services to assess the inmate's progress toward
1196 competency may not be involved in the routine treatment of the inmate.
- 1197 (b) ~~[The examiner or examiners]~~ An examiner shall each provide a full report to the
1198 court and counsel for the state and the inmate within 90 days ~~[of receipt of the court's~~
1199 ~~order]~~ after the day on which the examiner receives the court's order.
- 1200 (c) If any examiner is unable to complete the assessment within 90 days, that examiner
1201 shall provide to the court~~[and]~~ , the counsel for the state, and the inmate a summary
1202 progress report ~~[which]~~ that informs the court that additional time is necessary to
1203 complete the assessment, in which case the examiner has up to an additional 90 days
1204 to provide the full report, unless the court ~~[enlarges]~~ extends the time for good cause.
- 1205 (d) The full report shall assess:
- 1206 (i) the facility's or program's capacity to provide appropriate treatment for the inmate;
- 1207 (ii) the nature of treatments provided to the inmate;
- 1208 (iii) what progress toward restoration of competency has been made;
- 1209 (iv) the inmate's current level of mental disorder and need for treatment, if any; and
- 1210 (v) the likelihood of restoration of competency and the amount of time estimated to
1211 achieve it.
- 1212 (3) ~~[The court on its]~~ Upon the court's own motion or upon motion by either party, the court
1213 may order the Department of Health and Human Services to appoint additional mental
1214 health examiners to examine the inmate and advise the court on the inmate's current
1215 mental status and progress toward competency restoration.
- 1216 (4)(a) Upon receipt of the full report, the court shall hold a hearing to determine the
1217 inmate's current status.
- 1218 (b) At the hearing, the burden of proving that the inmate is competent is on the

- 1219 proponent of competency.
- 1220 ~~[(b)]~~ (c) Following the hearing, the court shall determine by a preponderance of evidence
- 1221 whether the inmate is competent to be executed.
- 1222 (5)(a) If the court determines that the inmate is competent to be executed, ~~[it]~~ the court
- 1223 shall enter findings and shall proceed under ~~[Subsection 77-19-202(2)(e)]~~ Section
- 1224 77-19-204.5.
- 1225 (b)(i) If the court determines the inmate is still incompetent to be executed~~[-]~~ :
- 1226 (A) the inmate shall continue to receive appropriate mental health treatment~~[-and-]~~ ;
- 1227 and
- 1228 (B) the court shall hold hearings no less frequently than at 18-month intervals for
- 1229 the purpose of determining the ~~[defendant's]~~ inmate's competency to be
- 1230 executed.
- 1231 (ii) Continued appropriate mental health treatment under Subsection ~~[(1)(a)(i)]~~ (1)(b)
- 1232 does not include the forcible administration of psychoactive medication for the
- 1233 sole purpose of restoring the inmate's competency to be executed.
- 1234 (6)(a) ~~[If]~~ The court shall be notified if, at any time, the clinical director of the Utah
- 1235 State Hospital or the primary treating mental health professional determines that the
- 1236 inmate has been restored to competency~~[-, he shall notify the court]~~.
- 1237 (b) The court shall conduct a hearing regarding the inmate's competency to be executed
- 1238 within 30 working days of the receipt of the notification under Subsection (6)(a),
- 1239 unless the court extends the time for good cause.
- 1240 (c) The court may order a hearing or rehearing at any time on ~~[its]~~ the court's own motion.
- 1241 (7) Notice of a hearing on competency to be executed shall be given to:
- 1242 (a) counsel for the state and for the inmate~~[-, as well as to-]~~ ; and
- 1243 (b) the office of the ~~[prosecutor]~~ prosecuting attorney who prosecuted the inmate on the
- 1244 original capital charge.
- 1245 Section 21. Section **78A-3-102** is amended to read:
- 1246 **78A-3-102 . Jurisdiction of Supreme Court.**
- 1247 (1) The Supreme Court has original jurisdiction to answer questions of state law certified
- 1248 by a court of the United States.
- 1249 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
- 1250 authority to issue all writs and process necessary to carry into effect the Supreme Court's
- 1251 orders, judgments, and decrees or in aid of the jurisdiction of the Supreme Court.
- 1252 (3)(a) The Supreme Court has exclusive and original appellate jurisdiction, including

- 1253 exclusive and original appellate jurisdiction of an interlocutory appeal, over:
- 1254 (i) a judgment of the Court of Appeals;
- 1255 (ii) a case certified to the Supreme Court by the Court of Appeals before final
- 1256 judgment by the Court of Appeals;
- 1257 (iii) the discipline of a lawyer;
- 1258 (iv) a final order of the Judicial Conduct Commission;
- 1259 [~~(v) an interlocutory appeal from a court of record involving a capital felony;~~]
- 1260 [~~(vi)~~] (v) except as provided in Subsection (5), an appeal from the district court
- 1261 involving a conviction or charge of a capital felony;
- 1262 [~~(vii)~~] (vi) an appeal from the district court of an order, judgment, or decree ruling on
- 1263 a legislative subpoena;
- 1264 [~~(viii)~~] (vii) an appeal of an injunctive order as described in Section 78B-5-1002;
- 1265 [~~(ix)~~] (viii) a judgment, or an interlocutory appeal of an order, of a district court
- 1266 involving:
- 1267 (A) an election or voting contest; or
- 1268 (B) the establishment of boundaries of political districts for purposes of an
- 1269 election; and
- 1270 [~~(x)~~] (ix) the retention or removal of a public officer.
- 1271 (b) The Supreme Court may not transfer any matter described in Subsection (3)(a) to the
- 1272 Court of Appeals.
- 1273 (c) In a case involving an election or voting contest or the establishment of boundaries
- 1274 of political districts for purposes of an election, a judgment is appealable to the
- 1275 Supreme Court even if:
- 1276 (i) a party files a motion or claim for attorney fees under Rule 73 of the Utah Rules of
- 1277 Civil Procedure in the district court; and
- 1278 (ii) the district court has not entered a dispositive order for that motion or claim.
- 1279 (d) The Supreme Court has exclusive and original appellate jurisdiction to conduct an
- 1280 automatic review of a conviction or sentence for a capital felony where the sentence
- 1281 is death in accordance with Subsection 76-3-207(11).
- 1282 (4)(a) In addition to Subsection (3)(a), the Supreme Court has original appellate
- 1283 jurisdiction, including original appellate jurisdiction of an interlocutory appeal, over:
- 1284 (i) a final agency action, as described in Section 63G-4-403, in a formal adjudicative
- 1285 proceeding originating from:
- 1286 (A) the Public Service Commission;

- 1287 (B) the State Tax Commission;
- 1288 (C) the School and Institutional Trust Lands Board of Trustees;
- 1289 (D) the Board of Oil, Gas, and Mining;
- 1290 (E) the state engineer; or
- 1291 (F) the executive director of the Department of Natural Resources reviewing an
- 1292 action of the Division of Forestry, Fire, and State Lands;
- 1293 (ii) a final order or decree of the district court review of an informal adjudicative
- 1294 proceeding of an agency described in Subsection (4)(a)(i);
- 1295 (iii) a final judgment or decree of a court of record holding a statute of the United
- 1296 States or this state is unconstitutional on its face under the Constitution of the
- 1297 United States or the Utah Constitution;
- 1298 (iv) an interlocutory appeal from a court of record involving a first degree felony;
- 1299 (v) an appeal from a district court involving a conviction or charge of a first degree
- 1300 felony; and
- 1301 (vi) an order, judgment, or decree of a court of record over which the Court of
- 1302 Appeals does not have appellate jurisdiction.

1303 (b) The Supreme Court may transfer any matter described in Subsection (4)(a) to the

1304 Court of Appeals.

1305 (5)(a) The Supreme Court may not exercise subject matter jurisdiction over a claim for

1306 ineffective assistance of counsel in an appeal from, or upon an automatic review of, a

1307 conviction or sentence for a capital felony where the sentence is death.

1308 (b) Notwithstanding Subsection (5)(a), the Supreme Court has subject matter jurisdiction

1309 over a claim for ineffective assistance of counsel in an appeal involving a petition for

1310 postconviction relief from a conviction or sentence for a capital felony where the

1311 sentence is death.

1312 [~~5~~] (6)(a) The Supreme Court has sole discretion in granting or denying a petition for

1313 writ of certiorari for the review of a Court of Appeals adjudication.

1314 (b) Notwithstanding Subsection [~~5~~](a) (6)(a), the Supreme Court shall review a case

1315 certified to the Supreme Court by the Court of Appeals under Subsection (3)(a)(ii).

1316 [~~6~~] (7) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,

1317 Administrative Procedures Act, in the Supreme Court's review of an agency adjudicative

1318 proceeding.

1319 Section 22. Section **78A-5-102** is amended to read:

1320 **78A-5-102 . Jurisdiction of the district court -- Appeals.**

- 1321 (1) Except as otherwise provided by the Utah Constitution or by statute, the district court
1322 has original jurisdiction in all matters civil and criminal.
- 1323 (2) A district court judge may:
- 1324 (a) issue all extraordinary writs and other writs necessary to carry into effect the district
1325 court judge's orders, judgments, and decrees; and
- 1326 (b) preside over an action for which the Business and Chancery Court has jurisdiction if:
- 1327 (i) the district court judge is designated by the presiding officer of the Judicial
1328 Council to preside over an action in the Business and Chancery Court as described
1329 in Section 78A-1-103.5; and
- 1330 (ii) a Business and Chancery Court judge is unable to preside over the action due to
1331 recusal or disqualification.
- 1332 (3) The district court has jurisdiction:
- 1333 (a) over matters of lawyer discipline consistent with the rules of the Supreme Court;
- 1334 (b) over all matters properly filed in the circuit court prior to July 1, 1996;
- 1335 (c) to enforce foreign protective orders as described in Subsection 78B-7-303(8);
- 1336 (d) to enjoin a violation of Title 58, Chapter 37, Utah Controlled Substances Act;
- 1337 (e) over a petition seeking to terminate parental rights as described in Section 81-13-205;
- 1338 (f) except as provided in Subsection 78A-6-103(2)(a)(xiv) or (xv), over an adoption
1339 proceeding; and
- 1340 (g) to issue a declaratory judgment as described in Title 78B, Chapter 6, Part 4,
1341 Declaratory Judgments.
- 1342 (4) The district court has appellate jurisdiction over judgments and orders of the justice
1343 court as outlined in Section 78A-7-118 and small claims appeals filed in accordance
1344 with Section 78A-8-106.
- 1345 (5) The district court has jurisdiction to review:
- 1346 (a) a municipal administrative proceeding as described in Section 10-3-703.7;
- 1347 (b) a decision resulting from a formal adjudicative proceeding by the State Tax
1348 Commission as described in Section 59-1-601;
- 1349 (c) except as provided in Section 63G-4-402, a final agency action resulting from an
1350 informal adjudicative proceeding as described in Title 63G, Chapter 4,
1351 Administrative Procedures Act; and
- 1352 (d) by trial de novo, a final order of the Department of Transportation resulting from
1353 formal and informal adjudicative proceedings under Title 72, Chapter 7, Part 2,
1354 Junkyard Control Act.

- 1355 (6) The district court has original and exclusive jurisdiction over an action brought under
 1356 Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- 1357 (7) The district court has exclusive jurisdiction to modify a juvenile court's permanent
 1358 custody and guardianship order as described in Subsection 78A-6-357(3)(e)(ii).
- 1359 (8) Notwithstanding Section 78A-7-106, the district court has original jurisdiction over a
 1360 class B misdemeanor, a class C misdemeanor, an infraction, or a violation of an
 1361 ordinance for which a justice court has original jurisdiction under Section 78A-7-106 if:
 1362 (a) there is no justice court with territorial jurisdiction;
 1363 (b) the offense occurred within the boundaries of the municipality in which the district
 1364 courthouse is located and that municipality has not formed, or has formed and
 1365 dissolved, a justice court; or
 1366 (c) the offense is included in an indictment or information covering a single criminal
 1367 episode alleging the commission of a felony or a class A misdemeanor by an
 1368 individual who is 18 years old or older.
- 1369 (9) If a district court has jurisdiction in accordance with Subsection (4), (8)(a), or (8)(b), the
 1370 district court has jurisdiction over an offense listed in Subsection 78A-7-106(2) even if
 1371 the offense is committed by an individual who is 16 or 17 years old.
- 1372 (10) The district court has subject matter jurisdiction over an action under Title 78B,
 1373 Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the action to the
 1374 district court.
- 1375 (11)(a) The district court has subject matter jurisdiction over a criminal action that the
 1376 justice court transfers to the district court.
- 1377 (b) Notwithstanding Subsection 78A-7-106(1), the district court has original jurisdiction
 1378 over any refiled case of a criminal action transferred to the district court if the district
 1379 court dismissed the transferred case without prejudice.
- 1380 (12) The district court has no subject matter jurisdiction over a claim for ineffective
 1381 assistance for counsel in a criminal case involving a charge of a capital felony.
- 1382 [~~12~~] (13) If the juvenile court has concurrent jurisdiction under Subsection
 1383 78A-6-104(1)(a)(i) over a parentage action filed in the district court, the district court
 1384 may transfer jurisdiction over the parentage action to the juvenile court.
- 1385 [~~13~~] (14) The Supreme Court and Court of Appeals have jurisdiction over an appeal from
 1386 a final order, judgment, and decree of the district court as described in Sections
 1387 78A-3-102 and 78A-4-103.
- 1388 Section 23. Section **78B-9-202** is amended to read:

1389 **78B-9-202 . Appointment and payment of counsel in a death penalty case.**

1390 [~~(1) A person who has been sentenced to death and whose conviction and sentence has been~~
1391 ~~affirmed on appeal shall be advised in open court, on the record, in a hearing scheduled~~
1392 ~~no less than 30 days prior to the signing of the death warrant, of the provisions of this~~
1393 ~~chapter allowing challenges to the conviction and death sentence and the appointment of~~
1394 ~~counsel for indigent petitioners.]~~

1395 [~~(2)(a) If a petitioner requests the court to appoint counsel, the court shall determine~~
1396 ~~whether the petitioner is indigent and make findings on the record regarding the~~
1397 ~~petitioner's indigency. If the court finds that the petitioner is indigent, it shall, subject~~
1398 ~~to the provisions of Subsection (5), promptly appoint counsel who is qualified to~~
1399 ~~represent petitioners in postconviction death penalty cases as required by Rule 8 of~~
1400 ~~the Utah Rules of Criminal Procedure. Counsel who represented the petitioner at~~
1401 ~~trial or on the direct appeal may not be appointed to represent the petitioner under~~
1402 ~~this section.]~~

1403 [~~(b) A petitioner who wishes to reject the offer of counsel shall be advised on the record~~
1404 ~~by the court of the consequences of the rejection before the court may accept the~~
1405 ~~rejection.]~~

1406 (1)(a) Within 30 days after the day on which the Supreme Court remits a case after
1407 affirming an individual's conviction and sentence of death, the sentencing court shall:
1408 (i) advise the individual, in open court and on the record, of the provisions of this
1409 chapter allowing challenges to the individual's conviction and sentence; and
1410 (ii) appoint counsel to represent the individual on a petition for postconviction relief
1411 in accordance with this section and Rule 8 of the Utah Rules of Criminal
1412 Procedure.

1413 (b) Subject to Subsection (1)(c), Subsection (1)(a)(ii) does not prevent an individual
1414 from obtaining private counsel or waiving the appointment of counsel.

1415 (c) If an individual wishes to reject the appointment of counsel under Subsection
1416 (1)(a)(ii), the sentencing court shall make a finding regarding the individual's
1417 understanding of the legal consequences of proceeding without the appointment of
1418 postconviction counsel.

1419 (d) The sentencing court may not appoint counsel who represented the individual at trial,
1420 or on the direct appeal, under Subsection (1)(a)(ii).

1421 (e) For purposes of Subsection (1)(a)(ii), the Supreme Court shall maintain a list of
1422 postconviction counsel qualified to represent an individual who has been sentenced to

- 1423 death on a petition for postconviction relief.
- 1424 (2) For a second or successive petition for postconviction relief, a court may not appoint
1425 postconviction counsel for an individual sentenced to death at the expense of the public,
1426 except for a claim:
- 1427 (a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or
1428 (b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any
1429 previously filed post trial motion or postconviction proceeding.
- 1430 (3)(a) Attorney fees and litigation expenses incurred in providing the representation
1431 provided for in this section and that the court has determined are reasonable shall be
1432 paid from state funds by the Division of Finance according to rules established
1433 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1434 [(a)] (b) In determining whether the requested funds are reasonable, the court should
1435 consider:
- 1436 (i) the extent to which the petitioner requests funds to investigate and develop
1437 evidence and legal arguments that duplicate the evidence presented and arguments
1438 raised in the criminal proceeding; and
- 1439 (ii) whether the petitioner has established that the requested funds are necessary to
1440 develop evidence and legal arguments that are reasonably likely to support
1441 postconviction relief.
- 1442 [(b)]
- 1443 (c)(i) The court may authorize payment of attorney fees at a rate of [~~\$125~~] \$250 per
1444 hour up to a maximum of [~~\$60,000~~] \$120,000.
- 1445 (ii) The court may exceed the maximum amount described in Subsection (3)(c)(i)
1446 only upon a showing of good cause as established in Subsections [~~(3)(e) and (f)~~]
1447 (3)(f) and (g).
- 1448 [(e)]
- 1449 (d)(i) The court may authorize litigation expenses up to a maximum of [~~\$20,000~~]
1450 \$40,000.
- 1451 (ii) Litigation expenses under Subsection (3)(d)(i) may include payment for an
1452 investigator, a mitigation specialist, a mental health and forensic science expert,
1453 and support personnel.
- 1454 (iii) The court may exceed the maximum amount described in Subsection (3)(d)(i)
1455 only upon a showing of good cause as established in Subsections [~~(3)(e) and (f)~~]
1456 (3)(f) and (g).

- 1457 ~~[(d)]~~
- 1458 (e)(i) The court may authorize the petitioner to apply ex parte for the funds permitted
- 1459 in Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d) upon a motion to proceed ex parte and
- 1460 if the petitioner establishes the need for confidentiality.
- 1461 (ii) The motion to proceed ex parte must be served on counsel representing the state~~;~~
- 1462 ~~and the~~ .
- 1463 (iii) The court may not grant the motion without giving the state an opportunity to
- 1464 respond.
- 1465 ~~[(e)]~~ (f) In determining whether good cause exists to exceed the maximum sums
- 1466 established in Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d), the court shall consider:
- 1467 (i) the extent to which the work done to date and the further work identified by the
- 1468 petitioner duplicates work and investigation performed during the criminal case
- 1469 under review; and
- 1470 (ii) whether the petitioner has established that the work done to date and the further
- 1471 work identified is reasonably likely to develop evidence or legal arguments that
- 1472 will support postconviction relief.
- 1473 ~~[(f)]~~ (g) The court may permit payment in excess of the maximum amounts established in
- 1474 Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d) only on the petitioner's motion, provided
- 1475 that:
- 1476 (i) if the court has granted a motion to file ex parte applications under Subsection [
- 1477 ~~(3)(d)]~~ (3)(e), the petitioner ~~[shall serve]~~ serves the motion to exceed the maximum
- 1478 amounts on an assistant attorney general employed in a division other than the one
- 1479 in which the attorney is employed who represents the state in the postconviction
- 1480 case;
- 1481 (ii) if the court has not granted a motion to file ex parte applications, ~~[then the~~
- 1482 ~~petitioner must serve]~~ the petitioner serves the attorney representing the state in
- 1483 the postconviction matter with the motion to exceed the maximum funds;
- 1484 ~~[(iii)]~~ (iii) if the motion proceeds under Subsection ~~[(3)(f)(i)]~~ (3)(g)(i), the designated
- 1485 assistant attorney general ~~[may]~~ does not disclose to the attorney representing the
- 1486 state in the postconviction matter any material the petitioner provides in support of
- 1487 the motion except upon a determination by the court that the material is not
- 1488 protected by or that the petitioner has waived the attorney client privilege or work
- 1489 product doctrine; and
- 1490 ~~[(iii)]~~ (iv) the court gives the state an opportunity to respond to the request for funds

1491 in excess of the maximum amounts provided in Subsections [~~(3)(b) and (e)~~] (3)(c)
 1492 and (d).

1493 (4)(a) Nothing in this chapter shall be construed as creating the right to the effective
 1494 assistance of postconviction counsel~~[, and relief]~~ .

1495 (b) Relief may not be granted on any claim that postconviction counsel was ineffective.

1496 [~~(5) If within 60 days of the request for counsel the court cannot find counsel willing to
 1497 accept the appointment, the court shall notify the petitioner and the state's counsel in
 1498 writing. In that event, the petitioner may elect to proceed pro se by serving written
 1499 notice of that election on the court and state's counsel within 30 days of the court's
 1500 notice that no counsel could be found. If within 30 days of its notice to the petitioner the
 1501 court receives no notice that the petitioner elects to proceed pro se, the court shall
 1502 dismiss any pending postconviction actions and vacate any execution stays, and the state
 1503 may initiate proceedings under Section 77-19-9 to issue an execution warrant.]~~

1504 [~~(6) Subject to Subsection (2)(a) the court shall appoint counsel to represent the petitioner
 1505 for the first petition filed after the direct appeal. For all other petitions, counsel may not
 1506 be appointed at public expense for a petitioner, except to raise claims:]~~

1507 [~~(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or]~~

1508 [~~(b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any
 1509 previously filed post trial motion or postconviction proceeding.]~~

1510 Section 24. **Repealer.**

1511 This bill repeals:

1512 Section **77-15a-103, Court may raise issue of intellectual disability at any time.**

1513 Section **77-18a-2, Capital cases.**

1514 Section **77-19-7, Judgment of death -- Statement to Board of Pardons and Parole.**

1515 Section 25. **Effective Date.**

1516 This bill takes effect on May 6, 2026.