

R671. Pardons (Board of), Administration.

R671-207. Custody Transfer for Mentally Ill [and Deteriorated] Offenders and Mentally Decompensating Offenders [~~Custody Transfer~~].

~~[R671-207-1. Transfer From the Prison to the Hospital of an Offender Whose Mental Health Has Deteriorated.]~~

~~The Department of Corrections will notify the Board whenever a mentally ill offender is transferred from the Hospital to the Prison pursuant to 77-16a-204 (5). The custody transfer of an inmate, who has not been adjudicated as mentally-ill by the Court and who is housed at the Prison, whose mental health has deteriorated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment, will occur when the Prison and the Hospital agree to a transfer. The Department of Corrections will notify the Board's Mental Health Advisor whenever an offender is transferred from the Prison to the Hospital and the Board will stay any hearing until the offender is transferred from the Hospital back to the Prison pursuant to the requirements of 77-16a-204, Utah Code, and the provisions of rule R207-2, Utah Administrative Code.~~

~~If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the transfer should occur pursuant to 62A-15-605. Upon notification by the Department of Corrections to the Board's Mental Health Advisor that the agencies cannot agree, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation pursuant to the requirement of 62A-15-605.5 to the Board. The Board will issue its decision within 30 days of the Administrative Hearing.~~

~~R671-207-2. Mentally Ill Offender Custody Transfer.~~

~~Custody transfer of a mentally-ill offender, under the jurisdiction of the Board of Pardons and Parole, and placed by the Court at the Utah State Hospital, will occur when the Hospital and the Prison agree that the Prison can provide the mentally-ill offender with the level of care necessary to maintain the offender's current mental condition and status. The Department of Corrections will notify the Board whenever a mentally-ill offender is transferred from the Hospital to the Prison and the Board will set a date for a parole hearing.~~

~~If the Hospital and the Prison cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred to the Prison. Upon notification from the Division of Human Services to the Board's Mental Health Advisor that the agencies cannot agree upon the transfer, the Advisor will conduct an Administrative hearing. Both agencies will~~

~~provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation, pursuant to the requirements of 77-16a-204, to the Board as to the transfer. The Board will issue its decision within 30 days of the Administrative Hearing.~~

~~**R671-207-3. Retransfer From the Department of Corrections to the Utah State Hospital.**~~

~~Custody transfer of a mentally-ill offender, under the jurisdiction of the Board, whose custody was transferred from the Utah State Hospital to the Utah State Prison may be transferred back to the Utah State Hospital when the Prison and the Hospital agree that the offender's mental condition has deteriorated or the offender has become mentally unstable to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment. The Department of Corrections will notify the Board's Mental Health Advisor whenever a mentally-ill offender is transferred back to the State Hospital from the Prison. The Board will stay any hearing until the offender's mental health has been stabilized and the offender has been transferred back to the prison, in accordance with Rule R207-1, Utah Administrative Code and Section 77-16a-204, Utah Code.~~

~~If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred back to the Hospital. Upon notification from the Department of Corrections that the Prison and the Hospital cannot agree upon a transfer, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Advisor will then make a recommendation to the Board as to the transfer pursuant to the requirements of 77-16a-204. The Board will issue its decision within 30 days of the administrative hearing.~~

~~A mentally-ill offender who has been readmitted to the Utah State Hospital pursuant to these rules may be transferred back to the Department of Corrections in accordance with Rule R207-1, Utah Administrative Code and the requirements of Section 77-16a-204, Utah Code.]~~

R671-207-1. Definitions.

For purposes of this rule the following definitions apply:

(1) "Mentally decompensating offender" means an individual who is in the custody of the Department of Corrections (Department), who has not been adjudicated as a mentally ill offender by a court, but whose mental health has decompensated

to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment.

(2) "Mentally ill offender" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability, pursuant to Section 77-16a-202.

(3) "State Hospital" means the Utah State Hospital or other facilities designated by the Utah State Hospital where offenders may be housed for mental health treatment.

(4) "Correctional facility" means any of the Utah prison facilities operated by the Department or any portion of a county jail contracted with the Department to house offenders.

(5) "Health and Human Services" means the Utah Department of Health and Human Services.

R671-207-2. Transferring a Mentally Ill Offender from the State Hospital to a Correctional Facility.

(1) If Health and Human Services and the Department agree that a correctional facility can provide a mentally ill offender with adequate mental health treatment, that mentally ill offender shall be transferred from the State Hospital to a correctional facility in accordance with Subsections 77-16a-204(1) through (3).

(2) If Health and Human Services and the Department do not agree on the transfer of a mentally ill offender from the State Hospital to a correctional facility, Health and Human Services shall notify the Board, in writing, of the dispute. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before an administrative hearing. The Board shall conduct an administrative hearing and may take testimony at that hearing. The Board shall issue its decision within 30 days of the administrative hearing.

(3) The Department shall notify the Board when a mentally ill offender is transferred from the State Hospital to a correctional facility.

(4) The Board shall schedule any necessary hearing upon the mentally ill offender's transfer to a correctional facility.

(5) The Department shall receive any mentally ill offender when the Board orders the transfer.

R671-207-3. Retransferring a Mentally Ill Offender from a Correctional Facility to the State Hospital and Stay of Board Hearings.

(1) When a mentally ill offender, who has previously been transferred from State Hospital to a correctional facility, and who the Department has accepted, is later evaluated and it is determined that the mentally ill offender's mental condition has

decompensated or that the mentally ill offender has become mentally unstable, that mentally ill offender may be retransferred back to the State Hospital if the Department and Health and Human Services agree to the retransfer.

(2) The Board shall stay any hearing for the mentally ill offender until the mentally ill offender is transferred back to a correctional facility, except for hearings regarding transfer back of the mentally ill offender to a correctional facility.

(3) If Health and Human Services and the Department do not agree to the retransfer of a mentally ill offender from a correctional facility to the State Hospital, the Board shall determine whether the mentally ill offender will be retransferred back to the State Hospital.

(4) The Department shall notify the Board, in writing, that the Department and Health and Human Services do not agree on a mentally ill offender's retransfer to the State Hospital. The Board shall conduct an administrative hearing on the matter. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before the administrative hearing. The Board may take testimony at the hearing. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally ill offender in the Department's custody when the Board orders the transfer.

(6) A mentally ill offender who has been retransferred to the State Hospital pursuant to this rule may be transferred back to a correctional facility in accordance with the Board's administrative rules and Section 77-16a-204.

R671-207-4. Transfer of a Mentally Decompensating Offender from a Correctional Facility to the State Hospital and Stay of Hearings.

(1) If the Department determines that a mentally decompensating offender in its custody needs to be transferred to the State Hospital to ensure adequate mental health treatment, the Department may request Health and Human Services transfer that mentally decompensating offender to the State Hospital.

(2) If Health and Human Services and the Department do not agree to transfer a mentally decompensating offender to the State Hospital, the Board shall determine whether the mentally decompensating offender will be transferred to the State Hospital.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally decompensating offender in the Department's custody when the Board orders the transfer.

(6) The Department shall notify the Board when a mentally decompensating offender is transferred from a correctional facility to the State Hospital.

(7) The Board shall stay any hearings while a mentally decompensating offender is in the State Hospital, except for hearings regarding retransfer of a mentally decompensating offender to a correctional facility.

R671-207-5. Retransfer of a Mentally Decompensating Offender from the State Hospital to a Correctional Facility.

(1) Mentally decompensating offenders who have previously been transferred to the State Hospital shall be retransferred back to a correctional facility through agreement between the Department and Health and Human Services.

(2) If the Department and Health and Human Services cannot agree on a retransfer, the Board shall determine if the mentally decompensating offender will be retransferred back to a correctional facility.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making this decision, the Board shall consider the factors in Subsection 62A-15-605.5(4). The Board shall issue its decision within 30 days of the administrative hearing.

(5) The Department shall notify the Board when a mentally decompensating offender is transferred back to a correctional facility.

(6) The Board shall schedule any necessary hearing for the mentally decompensating offender upon return to a correctional facility.

(7) The Department shall receive any previously transferred mentally decompensating offender when the Board orders the retransfer.

KEY: criminal competency, mentally ill offender, mentally decompensating offender

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