

1 **CIVIL COMMITMENT EXAMINER REQUIREMENTS**
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Nelson T. Abbott
Senate Sponsor: Michael S. Kennedy

2
3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions related to designated examiners.

6 **Highlighted Provisions:**

7 This bill:

8 ▸ related to civil commitments, adds certain psychiatric mental health nurse practitioners
9 and psychiatric mental health clinical nurse specialists to the use of the term "designated
10 examiner"; and

11 ▸ makes technical and conforming changes.

12 **Money Appropriated in this Bill:**

13 None

14 **Other Special Clauses:**

15 None

16 **Utah Code Sections Affected:**

17 AMENDS:

18 **26B-5-332**, as renumbered and amended by Laws of Utah 2023, Chapter 308

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

21 Section 1. Section **26B-5-332** is amended to read:

22 **26B-5-332 . Involuntary commitment under court order -- Examination --**
23 **Hearing -- Power of court -- Findings required -- Costs.**

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

- 29 (a) unless the court finds that the information is not reasonably available, the proposed
30 patient's:
- 31 (i) name;
- 32 (ii) date of birth; and
- 33 (iii) social security number;
- 34 (b) (i) a certificate of a licensed physician or a designated examiner stating that
35 within the seven-day period immediately preceding the certification, the physician
36 or designated examiner examined the proposed patient and is of the opinion that
37 the proposed patient has a mental illness and should be involuntarily committed; or
38 (ii) a written statement by the applicant that:
- 39 (A) the proposed patient has been requested to, but has refused to, submit to an
40 examination of mental condition by a licensed physician or designated
41 examiner;
- 42 (B) is sworn to under oath; and
- 43 (C) states the facts upon which the application is based; and
- 44 (c) a statement whether the proposed patient has previously been under an assisted
45 outpatient treatment order, if known by the applicant.
- 46 (2) Before issuing a judicial order, the court:
- 47 (a) shall require the applicant to consult with the appropriate local mental health
48 authority at or before the hearing; and
- 49 (b) may direct a mental health professional from the local mental health authority to
50 interview the applicant and the proposed patient to determine the existing facts and
51 report the existing facts to the court.
- 52 (3) The court may issue an order, directed to a mental health officer or peace officer, to
53 immediately place a proposed patient in the custody of a local mental health authority or
54 in a temporary emergency facility, as described in Section 26B-5-334, to be detained for
55 the purpose of examination if:
- 56 (a) the court finds from the application, any other statements under oath, or any reports
57 from a mental health professional that there is a reasonable basis to believe that the
58 proposed patient has a mental illness that poses a danger to self or others and requires
59 involuntary commitment pending examination and hearing; or
- 60 (b) the proposed patient refuses to submit to an interview with a mental health
61 professional as directed by the court or to go to a treatment facility voluntarily.
- 62 (4) (a) The court shall provide notice of commencement of proceedings for involuntary

63 commitment, setting forth the allegations of the application and any reported facts,
64 together with a copy of any official order of detention, to a proposed patient before,
65 or upon, placement of the proposed patient in the custody of a local mental health
66 authority or, with respect to any proposed patient presently in the custody of a local
67 mental health authority whose status is being changed from voluntary to involuntary,
68 upon the filing of an application for that purpose with the court.

69 (b) The place of detention shall maintain a copy of the order of detention.

70 (5) (a) The court shall provide notice of commencement of proceedings for involuntary
71 commitment as soon as practicable to the applicant, any legal guardian, any
72 immediate adult family members, legal counsel for the parties involved, the local
73 mental health authority or the local mental health authority's designee, and any other
74 persons whom the proposed patient or the court designates.

75 (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall
76 advise the persons that a hearing may be held within the time provided by law.

77 (c) If the proposed patient refuses to permit release of information necessary for
78 provisions of notice under this subsection, the court shall determine the extent of
79 notice.

80 (6) Proceedings for commitment of an individual under 18 years old to a local mental health
81 authority may be commenced in accordance with Part 4, Commitment of Persons Under
82 Age 18.

83 (7) (a) The court may, in the court's discretion, transfer the case to any other district
84 court within this state, if the transfer will not be adverse to the interest of the
85 proposed patient.

86 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be
87 transferred and the local mental health authority may be substituted in accordance
88 with Utah Rules of Civil Procedure, Rule 25.

89 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a
90 judicial order, or after commitment of a proposed patient to a local mental health
91 authority or the local mental health authority's designee under court order for detention
92 or examination, the court shall appoint two designated examiners:

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

95 (b) one of whom is[-] :

96 (i) a licensed physician; or

- 97 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health
98 clinical nurse specialist who:
99 (A) is nationally certified;
100 (B) is doctorally trained; and
101 (C) has at least two years of inpatient mental health experience, regardless of the
102 license the individual held at the time of that experience; and
103 (c) one of whom may be designated by the proposed patient or the proposed patient's
104 counsel, if that designated examiner is reasonably available.
- 105 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on
106 which the designated examiners are appointed.
- 107 (10) (a) The designated examiners shall:
- 108 (i) conduct the examinations separately;
- 109 (ii) conduct the examinations at the home of the proposed patient, at a hospital or
110 other medical facility, or at any other suitable place, including through telehealth,
111 that is not likely to have a harmful effect on the proposed patient's health;
- 112 (iii) inform the proposed patient, if not represented by an attorney:
- 113 (A) that the proposed patient does not have to say anything;
- 114 (B) of the nature and reasons for the examination;
- 115 (C) that the examination was ordered by the court;
- 116 (D) that any information volunteered could form part of the basis for the proposed
117 patient's involuntary commitment;
- 118 (E) that findings resulting from the examination will be made available to the
119 court; and
- 120 (F) that the designated examiner may, under court order, obtain the proposed
121 patient's mental health records; and
- 122 (iv) within 24 hours of examining the proposed patient, report to the court, orally or
123 in writing, whether the proposed patient is mentally ill, has agreed to voluntary
124 commitment, as described in Section 26B-5-360, or has acceptable programs
125 available to the proposed patient without court proceedings.
- 126 (b) If a designated examiner reports orally under Subsection (10)(a), the designated
127 examiner shall immediately send a written report to the clerk of the court.
- 128 (11) If a designated examiner is unable to complete an examination on the first attempt
129 because the proposed patient refuses to submit to the examination, the court shall fix a
130 reasonable compensation to be paid to the examiner.

- 131 (12) If the local mental health authority, the local mental health authority's designee, or a
132 medical examiner determines before the court hearing that the conditions justifying the
133 findings leading to a commitment hearing no longer exist, the local mental health
134 authority, the local mental health authority's designee, or the medical examiner shall
135 immediately report the determination to the court.
- 136 (13) The court may terminate the proceedings and dismiss the application at any time,
137 including before the hearing, if the designated examiners or the local mental health
138 authority or the local mental health authority's designee informs the court that the
139 proposed patient:
- 140 (a) does not meet the criteria in Subsection (16);
 - 141 (b) has agreed to voluntary commitment, as described in Section 26B-5-360;
 - 142 (c) has acceptable options for treatment programs that are available without court
143 proceedings; or
 - 144 (d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.
- 145 (14) (a) Before the hearing, the court shall provide the proposed patient an opportunity
146 to be represented by counsel, and if neither the proposed patient nor others provide
147 counsel, the court shall appoint counsel and allow counsel sufficient time to consult
148 with the proposed patient before the hearing.
- 149 (b) In the case of an indigent proposed patient, the county in which the proposed patient
150 resides or is found shall make payment of reasonable attorney fees for counsel, as
151 determined by the court.
- 152 (15) (a) (i) The court shall afford the proposed patient, the applicant, and any other
153 person to whom notice is required to be given an opportunity to appear at the
154 hearing, to testify, and to present and cross-examine witnesses.
- 155 (ii) The court may, in the court's discretion, receive the testimony of any other person.
 - 156 (iii) The court may allow a waiver of the proposed patient's right to appear for good
157 cause, which cause shall be set forth in the record, or an informed waiver by the
158 patient, which shall be included in the record.
- 159 (b) The court is authorized to exclude any person not necessary for the conduct of the
160 proceedings and may, upon motion of counsel, require the testimony of each
161 designated examiner to be given out of the presence of any other designated
162 examiners.
 - 163 (c) The court shall conduct the hearing in as informal a manner as may be consistent
164 with orderly procedure, and in a physical setting that is not likely to have a harmful

165 effect on the mental health of the proposed patient, while preserving the due process
166 rights of the proposed patient.

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

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

173 (A) the detention order;

174 (B) admission notes;

175 (C) the diagnosis;

176 (D) any doctors' orders;

177 (E) progress notes;

178 (F) nursing notes;

179 (G) medication records pertaining to the current commitment; and

180 (H) whether the proposed patient has previously been civilly committed or under
181 an order for assisted outpatient treatment.

182 (ii) The information described in Subsection (15)(e)(i) shall also be supplied to the
183 proposed patient's counsel at the time of the hearing, and at any time prior to the
184 hearing upon request.

185 (16) (a) The court shall order commitment of an adult proposed patient to a local mental
186 health authority if, upon completion of the hearing and consideration of the
187 information presented, the court finds by clear and convincing evidence that:

188 (i) the proposed patient has a mental illness;

189 (ii) because of the proposed patient's mental illness the proposed patient poses a
190 substantial danger to self or others;

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

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

196 (v) the local mental health authority can provide the proposed patient with treatment
197 that is adequate and appropriate to the proposed patient's conditions and needs.

198 (b) (i) If, at the hearing, the court determines that the proposed patient has a mental

- 199 illness but does not meet the other criteria described in Subsection (16)(a), the
200 court may consider whether the proposed patient meets the criteria for assisted
201 outpatient treatment under Section 26B-5-351.
- 202 (ii) The court may order the proposed patient to receive assisted outpatient treatment
203 in accordance with Section 26B-5-351 if, at the hearing, the court finds the
204 proposed patient meets the criteria for assisted outpatient treatment under Section
205 26B-5-351.
- 206 (iii) If the court determines that neither the criteria for commitment under Subsection
207 (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351
208 are met, the court shall dismiss the proceedings after the hearing.
- 209 (17) (a) (i) The order of commitment shall designate the period for which the patient
210 shall be treated.
- 211 (ii) If the patient is not under an order of commitment at the time of the hearing, the
212 patient's treatment period may not exceed six months without a review hearing.
- 213 (iii) Upon a review hearing, to be commenced before the expiration of the previous
214 order of commitment, an order for commitment may be for an indeterminate
215 period, if the court finds by clear and convincing evidence that the criteria
216 described in Subsection (16) will last for an indeterminate period.
- 217 (b) (i) The court shall maintain a current list of all patients under the court's order of
218 commitment and review the list to determine those patients who have been under
219 an order of commitment for the court designated period.
- 220 (ii) At least two weeks before the expiration of the designated period of any order of
221 commitment still in effect, the court that entered the original order of commitment
222 shall inform the appropriate local mental health authority or the local mental
223 health authority's designee of the expiration.
- 224 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
225 mental health authority or the local mental health authority's designee shall
226 immediately reexamine the reasons upon which the order of commitment was
227 based.
- 228 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
229 authority or the local mental health authority's designee determines that the
230 conditions justifying commitment no longer exist, the local mental health
231 authority or the local mental health authority's designee shall discharge the patient
232 from involuntary commitment and immediately report the discharge to the court.

- 233 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
234 authority or the local mental health authority's designee determines that the
235 conditions justifying commitment continue to exist, the court shall immediately
236 appoint two designated examiners and proceed under Subsections (8) through (14).
- 237 (c) (i) The local mental health authority or the local mental health authority's
238 designee responsible for the care of a patient under an order of commitment for an
239 indeterminate period shall, at six-month intervals, reexamine the reasons upon
240 which the order of indeterminate commitment was based.
- 241 (ii) If the local mental health authority or the local mental health authority's designee
242 determines that the conditions justifying commitment no longer exist, the local
243 mental health authority or the local mental health authority's designee shall
244 discharge the patient from the local mental health authority's or the local mental
245 health authority designee's custody and immediately report the discharge to the
246 court.
- 247 (iii) If the local mental health authority or the local mental health authority's designee
248 determines that the conditions justifying commitment continue to exist, the local
249 mental health authority or the local mental health authority's designee shall send a
250 written report of the findings to the court.
- 251 (iv) A patient and the patient's counsel of record shall be notified in writing that the
252 involuntary commitment will be continued under Subsection (17)(c)(iii), the
253 reasons for the decision to continue, and that the patient has the right to a review
254 hearing by making a request to the court.
- 255 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall
256 immediately appoint two designated examiners and proceed under Subsections (8)
257 through (14).
- 258 (18) (a) Any patient committed as a result of an original hearing or a patient's legally
259 designated representative who is aggrieved by the findings, conclusions, and order of
260 the court entered in the original hearing has the right to a new hearing upon a petition
261 filed with the court within 30 days after the day on which the court order is entered.
- 262 (b) The petition shall allege error or mistake in the findings, in which case the court shall
263 appoint three impartial designated examiners previously unrelated to the case to
264 conduct an additional examination of the patient.
- 265 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
266 conduct the new hearing in the manner otherwise permitted.

267 (19) The county in which the proposed patient resides or is found shall pay the costs of all
268 proceedings under this section.

269 Section 2. **Effective date.**

270 This bill takes effect on May 1, 2024.