

INVOLUNTARY COMMITMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the criteria for involuntary civil commitment.

Highlighted Provisions:

This bill:

▶ in certain circumstances, provides for the court-ordered civil commitment of an individual who:

- has been charged with a crime;
- is incompetent to proceed;
- has a mental illness; and
- has been diagnosed with anosognosia or unreasonably refused to undergo

mental health treatment;

- ▶ provides a severability clause; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



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

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

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

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

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

(i) name;

(ii) date of birth; and

(iii) social security number;

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

(ii) a written statement by the applicant that:

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

(B) is sworn to under oath; and

(C) states the facts upon which the application is based; and

(c) a statement whether the proposed patient has previously been under an assisted outpatient treatment order, if known by the applicant.

(2) Before issuing a judicial order, the court:

(a) shall require the applicant to consult with the appropriate local mental health authority at or before the hearing; and

(b) may direct a mental health professional from the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report the existing facts to the court.

59 (3) The court may issue an order, directed to a mental health officer or peace officer, to
60 immediately place a proposed patient in the custody of a local mental health authority or in a
61 temporary emergency facility, as described in Section 26B-5-334, to be detained for the
62 purpose of examination if:

63 (a) the court finds from the application, any other statements under oath, or any reports
64 from a mental health professional that there is a reasonable basis to believe that the proposed
65 patient has a mental illness that poses a danger to self or others and requires involuntary
66 commitment pending examination and hearing; or

67 (b) the proposed patient refuses to submit to an interview with a mental health
68 professional as directed by the court or to go to a treatment facility voluntarily.

69 (4) (a) The court shall provide notice of commencement of proceedings for involuntary
70 commitment, setting forth the allegations of the application and any reported facts, together
71 with a copy of any official order of detention, to a proposed patient before, or upon, placement
72 of the proposed patient in the custody of a local mental health authority or, with respect to any
73 proposed patient presently in the custody of a local mental health authority whose status is
74 being changed from voluntary to involuntary, upon the filing of an application for that purpose
75 with the court.

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

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

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

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

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

89 (7) (a) The court may, in the court's discretion, transfer the case to any other district

90 court within this state, if the transfer will not be adverse to the interest of the proposed patient.

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

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

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

100 (b) one of whom is a licensed physician; and

101 (c) one of whom may be designated by the proposed patient or the proposed patient's
102 counsel, if that designated examiner is reasonably available.

103 (9) The court shall schedule a hearing to be held within 10 calendar days after the day
104 on which the designated examiners are appointed.

105 (10) (a) The designated examiners shall:

106 (i) conduct the examinations separately;

107 (ii) conduct the examinations at the home of the proposed patient, at a hospital or other
108 medical facility, or at any other suitable place, including through telehealth, that is not likely to
109 have a harmful effect on the proposed patient's health;

110 (iii) inform the proposed patient, if not represented by an attorney:

111 (A) that the proposed patient does not have to say anything;

112 (B) of the nature and reasons for the examination;

113 (C) that the examination was ordered by the court;

114 (D) that any information volunteered could form part of the basis for the proposed
115 patient's involuntary commitment;

116 (E) that findings resulting from the examination will be made available to the court;

117 and

118 (F) that the designated examiner may, under court order, obtain the proposed patient's
119 mental health records; and

120 (iv) within 24 hours of examining the proposed patient, report to the court, orally or in

121 writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as
122 described in Section 26B-5-360, or has acceptable programs available to the proposed patient
123 without court proceedings.

124 (b) If a designated examiner reports orally under Subsection (10)(a), the designated
125 examiner shall immediately send a written report to the clerk of the court.

126 (11) If a designated examiner is unable to complete an examination on the first attempt
127 because the proposed patient refuses to submit to the examination, the court shall fix a
128 reasonable compensation to be paid to the examiner.

129 (12) If the local mental health authority, the local mental health authority's designee, or
130 a medical examiner determines before the court hearing that the conditions justifying the
131 findings leading to a commitment hearing no longer exist, the local mental health authority, the
132 local mental health authority's designee, or the medical examiner shall immediately report the
133 determination to the court.

134 (13) The court may terminate the proceedings and dismiss the application at any time,
135 including before the hearing, if the designated examiners or the local mental health authority or
136 the local mental health authority's designee informs the court that the proposed patient:

137 (a) does not meet the criteria in Subsection (16);

138 (b) has agreed to voluntary commitment, as described in Section 26B-5-360;

139 (c) has acceptable options for treatment programs that are available without court
140 proceedings; or

141 (d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.

142 (14) (a) Before the hearing, the court shall provide the proposed patient an opportunity
143 to be represented by counsel, and if neither the proposed patient nor others provide counsel, the
144 court shall appoint counsel and allow counsel sufficient time to consult with the proposed
145 patient before the hearing.

146 (b) In the case of an indigent proposed patient, the county in which the proposed
147 patient resides or is found shall make payment of reasonable attorney fees for counsel, as
148 determined by the court.

149 (15) (a) (i) The court shall afford the proposed patient, the applicant, and any other
150 person to whom notice is required to be given an opportunity to appear at the hearing, to
151 testify, and to present and cross-examine witnesses.

152 (ii) The court may, in the court's discretion, receive the testimony of any other person.

153 (iii) The court may allow a waiver of the proposed patient's right to appear for good
154 cause, which cause shall be set forth in the record, or an informed waiver by the patient, which
155 shall be included in the record.

156 (b) The court is authorized to exclude any person not necessary for the conduct of the
157 proceedings and may, upon motion of counsel, require the testimony of each designated
158 examiner to be given out of the presence of any other designated examiners.

159 (c) The court shall conduct the hearing in as informal a manner as may be consistent
160 with orderly procedure, and in a physical setting that is not likely to have a harmful effect on
161 the mental health of the proposed patient, while preserving the due process rights of the
162 proposed patient.

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

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

169 (A) the detention order;

170 (B) admission notes;

171 (C) the diagnosis;

172 (D) any doctors' orders;

173 (E) progress notes;

174 (F) nursing notes;

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

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

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

181 (16) (a) The court shall order commitment of an adult proposed patient to a local
182 mental health authority if, upon completion of the hearing and consideration of the information

183 presented, the court finds by clear and convincing evidence that:

184 (i) [(†)] (A) the proposed patient has a mental illness;

185 [(††)] (B) because of the proposed patient's mental illness the proposed patient poses a
186 substantial danger to self or others;

187 [(†††)] (C) the proposed patient lacks the ability to engage in a rational decision-making
188 process regarding the acceptance of mental treatment as demonstrated by evidence of inability
189 to weigh the possible risks of accepting or rejecting treatment;

190 [(††††)] (D) there is no appropriate less-restrictive alternative to a court order of
191 commitment; and

192 [(†††††)] (E) the local mental health authority can provide the proposed patient with
193 treatment that is adequate and appropriate to the proposed patient's conditions and needs[-]; or

194 (ii) (A) the proposed patient has been charged with a criminal offense;

195 (B) with respect to the charged offense, the proposed patient is incompetent to proceed
196 as that term is defined in Section [77-15-2](#);

197 (C) the proposed patient has a mental illness;

198 (D) the proposed patient has been diagnosed with anosognosia, as defined by the most
199 recent edition of the Diagnostic and Statistical Manual of Mental Disorders, or within the
200 preceding six months has been requested or ordered to undergo mental health treatment but has
201 unreasonably refused to undergo that treatment;

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

203 and

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

206 (b) (i) If, at the hearing, the court determines that the proposed patient has a mental
207 illness but does not meet the other criteria described in Subsection (16)(a), the court may
208 consider whether the proposed patient meets the criteria for assisted outpatient treatment under
209 Section [26B-5-351](#).

210 (ii) The court may order the proposed patient to receive assisted outpatient treatment in
211 accordance with Section [26B-5-351](#) if, at the hearing, the court finds the proposed patient
212 meets the criteria for assisted outpatient treatment under Section [26B-5-351](#).

213 (iii) If the court determines that neither the criteria for commitment under Subsection

214 (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351 are met, the
215 court shall dismiss the proceedings after the hearing.

216 (17) (a) (i) The order of commitment shall designate the period for which the patient
217 shall be treated.

218 (ii) If the patient is not under an order of commitment at the time of the hearing, the
219 patient's treatment period may not exceed six months without a review hearing.

220 (iii) Upon a review hearing, to be commenced before the expiration of the previous
221 order of commitment, an order for commitment may be for an indeterminate period, if the court
222 finds by clear and convincing evidence that the criteria described in Subsection (16) will last
223 for an indeterminate period.

224 (b) (i) The court shall maintain a current list of all patients under the court's order of
225 commitment and review the list to determine those patients who have been under an order of
226 commitment for the court designated period.

227 (ii) At least two weeks before the expiration of the designated period of any order of
228 commitment still in effect, the court that entered the original order of commitment shall inform
229 the appropriate local mental health authority or the local mental health authority's designee of
230 the expiration.

231 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
232 mental health authority or the local mental health authority's designee shall immediately
233 reexamine the reasons upon which the order of commitment was based.

234 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
235 authority or the local mental health authority's designee determines that the conditions
236 justifying commitment no longer exist, the local mental health authority or the local mental
237 health authority's designee shall discharge the patient from involuntary commitment and
238 immediately report the discharge to the court.

239 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
240 authority or the local mental health authority's designee determines that the conditions
241 justifying commitment continue to exist, the court shall immediately appoint two designated
242 examiners and proceed under Subsections (8) through (14).

243 (c) (i) The local mental health authority or the local mental health authority's designee
244 responsible for the care of a patient under an order of commitment for an indeterminate period

245 shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate
246 commitment was based.

247 (ii) If the local mental health authority or the local mental health authority's designee
248 determines that the conditions justifying commitment no longer exist, the local mental health
249 authority or the local mental health authority's designee shall discharge the patient from the
250 local mental health authority's or the local mental health authority designee's custody and
251 immediately report the discharge to the court.

252 (iii) If the local mental health authority or the local mental health authority's designee
253 determines that the conditions justifying commitment continue to exist, the local mental health
254 authority or the local mental health authority's designee shall send a written report of the
255 findings to the court.

256 (iv) A patient and the patient's counsel of record shall be notified in writing that the
257 involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the
258 decision to continue, and that the patient has the right to a review hearing by making a request
259 to the court.

260 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately
261 appoint two designated examiners and proceed under Subsections (8) through (14).

262 (18) (a) Any patient committed as a result of an original hearing or a patient's legally
263 designated representative who is aggrieved by the findings, conclusions, and order of the court
264 entered in the original hearing has the right to a new hearing upon a petition filed with the court
265 within 30 days after the day on which the court order is entered.

266 (b) The petition shall allege error or mistake in the findings, in which case the court
267 shall appoint three impartial designated examiners previously unrelated to the case to conduct
268 an additional examination of the patient.

269 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
270 conduct the new hearing in the manner otherwise permitted.

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

273 (20) If any provision of Subsection (16)(a)(ii) or the application of any provision of
274 Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with jurisdiction,
275 the remainder of Subsection (16)(a)(ii) shall be given effect without the invalid provision or

276 application. The provisions of Subsection (16)(a)(ii) are severable.

277 Section 2. **Effective date.**

278 This bill takes effect on May 1, 2024.