

ESSENTIAL TREATMENT AND INTERVENTION ACT

2017 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill establishes a process for an individual suffering from a substance use disorder to receive court-ordered essential treatment and intervention.

Highlighted Provisions:

This bill:

- defines terms;
- enacts the Essential Treatment and Intervention Act; and
- establishes a system for court-ordered essential treatment and intervention for an individual suffering from a substance use disorder.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-602, as last amended by Laws of Utah 2012, Chapter 248

62A-15-641, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
Chapter 8

ENACTS:

62A-15-1201, Utah Code Annotated 1953

62A-15-1202, Utah Code Annotated 1953

62A-15-1203, Utah Code Annotated 1953

62A-15-1204, Utah Code Annotated 1953

62A-15-1205, Utah Code Annotated 1953

62A-15-1206, Utah Code Annotated 1953

62A-15-1207, Utah Code Annotated 1953

62A-15-1208, Utah Code Annotated 1953

62A-15-1209, Utah Code Annotated 1953

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

Section 1. Section **62A-15-602** is amended to read:

62A-15-602. Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
Forensic Mental Health Facility, [~~and~~] Part 10, Declaration for Mental Health Treatment, and
Part 12, Essential Treatment and Intervention Act:

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

(2) "Approved treatment facility or program" means a treatment provider that meets the
standards described in Subsection **62A-15-103**(2)(a)(v).

~~[(2)]~~ (3) "Commitment to the custody of a local mental health authority" means that an
adult is committed to the custody of the local mental health authority that governs the mental
health catchment area in which the proposed patient resides or is found.

57 ~~[(3)]~~ (4) "Designated examiner" means a licensed physician familiar with severe
58 mental illness, preferably a psychiatrist, designated by the division as specially qualified by
59 training or experience in the diagnosis of mental or related illness or another licensed mental
60 health professional designated by the division as specially qualified by training and at least five
61 years' continual experience in the treatment of mental or related illness. At least one
62 designated examiner in any case shall be a licensed physician. No person who is the applicant,
63 or who signs the certification, under Section 62A-15-631 may be a designated examiner in the
64 same case.

65 ~~[(4)]~~ (5) "Designee" means a physician who has responsibility for medical functions
66 including admission and discharge, an employee of a local mental health authority, or an
67 employee of an agency that has contracted with a local mental health authority to provide
68 mental health services under Section 17-43-304.

69 (6) "Essential treatment" and "essential treatment and intervention" mean court-ordered
70 treatment at a local substance abuse authority or an approved treatment facility or program for
71 the treatment of an adult's substance use disorder.

72 ~~[(5)]~~ (7) "Harmful sexual conduct" means any of the following conduct upon an
73 individual without the individual's consent, or upon an individual who cannot legally consent
74 to the conduct including under the circumstances described in Subsections 76-5-406(1) through
75 (12):

- 76 (a) sexual intercourse;
- 77 (b) penetration, however slight, of the genital or anal opening of the individual;
- 78 (c) any sexual act involving the genitals or anus of the actor or the individual and the
79 mouth or anus of either individual, regardless of the gender of either participant; or
- 80 (d) any sexual act causing substantial emotional injury or bodily pain.

81 ~~[(6)]~~ (8) "Institution" means a hospital, or a health facility licensed under the
82 provisions of Section 26-21-9.

83 ~~[(7)]~~ (9) "Licensed physician" means an individual licensed under the laws of this state
84 to practice medicine, or a medical officer of the United States government while in this state in

the performance of official duties.

~~[(8)]~~ (10) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(11) "Local substance abuse authority" means the same as that term is defined in Section [62A-15-102](#) and described in Section [17-43-201](#).

~~[(9)]~~ (12) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

~~[(10)]~~ (13) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

~~[(11)]~~ (14) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

~~[(12)]~~ (15) "Patient" means an individual who is:

(a) under commitment to the custody or to the treatment services of a local mental health authority~~[-]; or~~

(b) undergoing essential treatment and intervention.

~~[(13)]~~ (16) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

~~[(14)]~~ (17) "Substantial danger" means the person, by his or her behavior, due to mental illness:

(a) is at serious risk to:

- 113 (i) commit suicide;
- 114 (ii) inflict serious bodily injury on himself or herself; or
- 115 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or
- 116 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or
- 117 (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in
- 118 harmful sexual conduct.

119 ~~[(15)]~~ (18) "Treatment" means psychotherapy, medication, including the administration

120 of psychotropic medication, and other medical treatments that are generally accepted medical

121 and psychosocial interventions for the purpose of restoring the patient to an optimal level of

122 functioning in the least restrictive environment.

123 Section 2. Section **62A-15-641** is amended to read:

124 **62A-15-641. Restrictions and limitations -- Civil rights and privileges.**

125 (1) Subject to the general rules of the division, and except to the extent that the director

126 or his designee determines that it is necessary for the welfare of the patient to impose

127 restrictions, every patient is entitled to:

128 (a) communicate, by sealed mail or otherwise, with persons, including official

129 agencies, inside or outside the facility;

130 (b) receive visitors; and

131 (c) exercise all civil rights, including the right to dispose of property, execute

132 instruments, make purchases, enter contractual relationships, and vote, unless the patient has

133 been adjudicated to be incompetent and has not been restored to legal capacity.

134 (2) When any right of a patient is limited or denied, the nature, extent, and reason for

135 that limitation or denial shall be entered in the patient's treatment record. Any continuing

136 denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment

137 record. Notice of that continuing denial in excess of 30 days shall be sent to the division ~~[or~~

138 ~~to]~~, the appropriate local mental health authority~~[-]~~, the appropriate local substance abuse

139 authority, or an approved treatment facility or program, whichever is most applicable to the

140 patient.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, ~~[his]~~ the patient's attorney, and the court, if any, that ordered ~~[his]~~ the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.

(4) Local mental health authorities, local substance abuse authorities, and approved treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.

(5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, ~~[promulgated]~~ created by the division, describing a patient's rights under Utah law.

(6) Notwithstanding Section ~~53B-17-303~~, ~~[any person]~~ an individual committed under this chapter has the right to determine the final disposition of ~~[his]~~ that individual's body after death.

Section 3. Section **62A-15-1201** is enacted to read:

Part 12. Essential Treatment and Intervention Act

62A-15-1201. Statement of legislative intent.

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

Section 4. Section **62A-15-1202** is enacted to read:

62A-15-1202. Definitions.

As used in this part:

(1) "Essential treatment examiner" means:

(a) a licensed physician, preferably a psychiatrist, who is designated by the division as

specifically qualified by training or experience in the diagnosis of substance use disorder; or

(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.

(2) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.

(3) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:

(a) drug overdose;

(b) suicide;

(c) serious bodily self-injury;

(d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or

(e) causing or attempting to cause serious bodily injury to another individual.

(4) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Section 5. Section **62A-15-1203** is enacted to read:

62A-15-1203. Petition for essential treatment -- Contents -- Guarantee for costs.

(1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the district court of the county in which the sufferer of the substance use disorder resides or is found.

(2) The petition shall include:

(a) the respondent's:

(i) legal name;

(ii) date of birth, if known;

(iii) social security number, if known; and

(iv) residence and current location, if known;

(b) the petitioner's relationship to the respondent;

(c) the name and residence of the respondent's legal guardian, if any and if known;

(d) a statement that the respondent:

(i) is suffering from a substance use disorder; and

(ii) if not treated for the substance use disorder presents a serious harm to self or

others;

(e) the factual basis for the statement described in Subsection (4)(d); and

(f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.

(3) Any petition filed under this section:

(a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment; and

(b) shall be accompanied by a financial guarantee, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent.

(4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

Section 6. Section **62A-15-1204** is enacted to read:

62A-15-1204. Criteria for essential treatment and intervention.

A district court shall order an individual to undergo essential treatment for a substance use disorder when the district court determines by clear and convincing evidence that the individual:

(1) suffers from a substance use disorder;

(2) can reasonably benefit from the essential treatment;

(3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and

(4) presents a serious harm to self or others.

Section 7. Section **62A-15-1205** is enacted to read:

62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.

(1) A district court shall review the assertions contained in the verified petition described in Section [62A-15-1203](#).

(2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:

(a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;

(b) provide notice of:

(i) the contents of the petition, including all assertions made;

(ii) a copy of any order for detention or examination;

(iii) the date of the hearing;

(iv) the purpose of the hearing;

(v) the right of the respondent to be represented by legal counsel; and

(vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;

(c) provide notice to:

(i) the respondent;

(ii) the respondent's guardian, if any; and

(iii) the petitioner; and

(d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date by two essential treatment examiners.

(3) The essential treatment examiners shall examine the respondent to determine:

(a) whether the respondent meets each of the criteria described in Section [62A-15-1204](#);

(b) the severity of the respondent's substance use disorder, if any;

(c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and

(d) the appropriate duration for essential treatment, if essential treatment is

recommended.

(4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.

(5) The court may, based upon the findings of the essential treatment examiners, terminate the proceedings and dismiss the petition.

(6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.

(7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.

(8) If, upon completion of the hearing, the court finds that the criteria in Section 62A-15-1204 are met, the court shall order essential treatment for an initial period that:

(a) does not exceed 360 days, subject to periodic review as provided in Section 62A-15-1206; and

(b) (i) is recommended by an essential treatment examiner; or

(ii) is otherwise agreed to at the hearing.

(9) The court shall designate the facility for the essential treatment, as:

(a) described in the petition;

(b) recommended by an essential treatment examiner; or

(c) agreed to at the hearing.

(10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.

(11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

Section 8. Section **62A-15-1206** is enacted to read:

62A-15-1206. Periodic review -- Discharge.

A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

(1) at least every 90 days after the day on which a patient is admitted, unless a court

orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;

(2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;

(3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and

(4) after discharging an essential treatment patient, send a report describing the reasons for discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

Section 9. Section **62A-15-1207** is enacted to read:

62A-15-1207. Seventy-two-hour emergency treatment.

(1) A court may order a respondent to be hospitalized for up to 72 hours if:

(a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section [62A-15-1204](#); and

(b) the court finds by clear and convincing evidence that the respondent presents an imminent threat of serious harm to self or others as a result of a substance use disorder.

(2) An individual who is admitted to a hospital under this section shall be released from the hospital within 72 hours after admittance, unless a treating physician or essential treatment examiner determines that the individual continues to pose an imminent threat of serious harm to self or others.

(3) If a treating physician or essential treatment examiner makes the determination described in Subsection (2), the individual may be detained for as long as the threat of serious harm remains imminent, but not more than 10 days after the day on which the individual was hospitalized, unless a court orders otherwise.

(4) A treating physician or an essential treatment examiner shall, as frequently as practicable, examine an individual hospitalized under this section and release the individual if the examination determines that a threat of imminent serious harm no longer exists.

Section 10. Section **62A-15-1208** is enacted to read:

62A-15-1208. Confidentiality.

(1) The purpose of Title 62A, Chapter 15, Part 12, Essential Treatment and Intervention Act, is to provide a process for essential treatment and intervention to save lives, preserve families, and reduce substance use disorder, including opioid addiction.

(2) An essential treatment petition and any other document filed in connection with the petition for essential treatment is confidential and protected.

(3) A hearing on an essential treatment petition is closed to the public, and only the following individuals and their legal counsel may be admitted to the hearing:

(a) parties to the petition;

(b) the essential treatment examiners who completed the court-ordered examination under Subsection [62A-15-1205\(3\)](#);

(c) individuals who have been asked to give testimony; and

(d) individuals to whom notice of the hearing is required to be given under Subsection [62A-15-1205\(2\)\(c\)](#).

(4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be construed or applied as an admission of guilt to a criminal offense.

(5) A court may, if applicable, enforce a previously existing warrant for a respondent or a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

Section 11. Section **62A-15-1209** is enacted to read:

62A-15-1209. Essential treatment for substance use disorder -- Rights of patient.

All applicable rights guaranteed to a patient by Sections [62A-15-641](#) and [62A-15-642](#) shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.