

INVOLUNTARY COMMITMENT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies Title 62A, Chapter 15, Substance Abuse and Mental Health Act, by amending procedures for involuntary commitment.

Highlighted Provisions:

This bill:

- requires an applicant for an involuntary commitment order to consult with the appropriate local mental health authority before the court may issue a judicial order if the local mental health authority appears at the commitment hearing;
- states that notice of involuntary commitment proceedings shall be sent to the local mental health authority or its designee; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-631, as last amended by Laws of Utah 2012, Chapter 248

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

Section 1. Section 62A-15-631 is amended to read:

62A-15-631. Involuntary commitment under court order -- Examination --

30 **Hearing -- Power of court -- Findings required -- Costs.**

31 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
32 older may be commenced by filing a written application with the district court of the county in
33 which the proposed patient resides or is found, by a responsible person who has reason to know
34 of the condition or circumstances of the proposed patient which lead to the belief that the
35 individual has a mental illness and should be involuntarily committed. That application shall
36 be accompanied by:

37 (a) a certificate of a licensed physician or a designated examiner stating that within a
38 seven-day period immediately preceding the certification the physician or designated examiner
39 has examined the individual, and that the physician or designated examiner is of the opinion
40 that the individual is mentally ill and should be involuntarily committed; or

41 (b) a written statement by the applicant that:

42 (i) the individual has been requested to, but has refused to, submit to an examination of
43 mental condition by a licensed physician or designated examiner;

44 (ii) is sworn to under oath; and

45 (iii) states the facts upon which the application is based.

46 (2) ~~Before~~ (a) Subject to Subsection (2)(b), before issuing a judicial order, the court
47 may require the applicant to consult with the appropriate local mental health authority, ~~or~~ and
48 may direct a mental health professional from that local mental health authority to interview the
49 applicant and the proposed patient to determine the existing facts and report them to the court.

50 (b) The consultation described in Subsection (2)(a):

51 (i) may take place at or before the hearing; and

52 (ii) is required if the local mental health authority appears at the hearing.

53 (3) If the court finds from the application, from any other statements under oath, or
54 from any reports from a mental health professional that there is a reasonable basis to believe
55 that the proposed patient has a mental illness ~~which~~ that poses a substantial danger, as
56 defined in Section 62A-15-602, to self or others requiring involuntary commitment pending
57 examination and hearing; or, if the proposed patient has refused to submit to an interview with

58 a mental health professional as directed by the court or to go to a treatment facility voluntarily,
59 the court may issue an order, directed to a mental health officer or peace officer, to
60 immediately place the proposed patient in the custody of a local mental health authority or in a
61 temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose
62 of examination. Within 24 hours of the issuance of the order for examination, a local mental
63 health authority or its designee shall report to the court, orally or in writing, whether the patient
64 is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a
65 voluntary patient under Section 62A-15-625, and whether treatment programs are available and
66 acceptable without court proceedings. Based on that information, the court may, without
67 taking any further action, terminate the proceedings and dismiss the application. In any event,
68 if the examiner reports orally, the examiner shall immediately send the report in writing to the
69 clerk of the court.

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

77 (5) Notice of commencement of those proceedings shall be provided by the court as
78 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
79 legal counsel for the parties involved, the local mental health authority or its designee, and any
80 other persons whom the proposed patient or the court shall designate. That notice shall advise
81 those persons that a hearing may be held within the time provided by law. If the patient has
82 refused to permit release of information necessary for provisions of notice under this
83 subsection, the extent of notice shall be determined by the court.

84 (6) Proceedings for commitment of an individual under the age of 18 years to the
85 division may be commenced by filing a written application with the juvenile court in

86 accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of
87 Substance Abuse and Mental Health.

88 (7) The district court may, in its discretion, transfer the case to any other district court
89 within this state, provided that the transfer will not be adverse to the interest of the proposed
90 patient.

91 (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the
92 issuance of a judicial order, or after commitment of a proposed patient to a local mental health
93 authority under court order for detention or examination, the court shall appoint two designated
94 examiners to examine the proposed patient. If requested by the proposed patient's counsel, the
95 court shall appoint, as one of the examiners, a reasonably available qualified person designated
96 by counsel. The examinations, to be conducted separately, shall be held at the home of the
97 proposed patient, a hospital or other medical facility, or at any other suitable place that is not
98 likely to have a harmful effect on the patient's health.

99 (b) The examiner shall inform the patient if not represented by an attorney that, if
100 desired, the patient does not have to say anything, the nature and reasons for the examination,
101 that it was ordered by the court, that any information volunteered could form part of the basis
102 for ~~[his or her]~~ the patient's involuntary commitment, and that findings resulting from the
103 examination will be made available to the court.

104 (c) A time shall be set for a hearing to be held within 10 calendar days of the
105 appointment of the designated examiners, unless those examiners or a local mental health
106 authority or its designee informs the court prior to that hearing date that the patient is not
107 mentally ill, that the patient has agreed to become a voluntary patient under Section
108 62A-15-625, or that treatment programs are available and acceptable without court
109 proceedings, in which event the court may, without taking any further action, terminate the
110 proceedings and dismiss the application.

111 (9) (a) Before the hearing, an opportunity to be represented by counsel shall be
112 afforded to every proposed patient, and if neither the patient nor others provide counsel, the
113 court shall appoint counsel and allow counsel sufficient time to consult with the patient before

114 the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for
115 counsel, as determined by the court, shall be made by the county in which the patient resides or
116 was found.

117 (b) The proposed patient, the applicant, and all other persons to whom notice is
118 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to
119 present and cross-examine witnesses. The court may, in its discretion, receive the testimony of
120 any other person. The court may allow a waiver of the patient's right to appear only for good
121 cause shown, and that cause shall be made a matter of court record.

122 (c) The court is authorized to exclude all persons not necessary for the conduct of the
123 proceedings and may, upon motion of counsel, require the testimony of each examiner to be
124 given out of the presence of any other examiners.

125 (d) The hearing shall be conducted in as informal a manner as may be consistent with
126 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
127 mental health of the proposed patient.

128 (e) The court shall consider all relevant historical and material information [~~which~~] that
129 is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah
130 Rules of Evidence.

131 (f) (i) A local mental health authority or its designee, or the physician in charge of the
132 patient's care shall, at the time of the hearing, provide the court with the following information:

- 133 (A) the detention order;
- 134 (B) admission notes;
- 135 (C) the diagnosis;
- 136 (D) any doctors' orders;
- 137 (E) progress notes;
- 138 (F) nursing notes; and
- 139 (G) medication records pertaining to the current commitment.

140 (ii) That information shall also be supplied to the patient's counsel at the time of the
141 hearing, and at any time prior to the hearing upon request.

142 (10) The court shall order commitment of an individual who is 18 years of age or older
143 to a local mental health authority if, upon completion of the hearing and consideration of the
144 information presented in accordance with Subsection (9)(e), the court finds by clear and
145 convincing evidence that:

146 (a) the proposed patient has a mental illness;

147 (b) because of the proposed patient's mental illness the proposed patient poses a
148 substantial danger, as defined in Section 62A-15-602, to self or others, which may include the
149 inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to
150 remain at liberty;

151 (c) the patient lacks the ability to engage in a rational decision-making process
152 regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh
153 the possible risks of accepting or rejecting treatment;

154 (d) there is no appropriate less-restrictive alternative to a court order of commitment;
155 and

156 (e) the local mental health authority can provide the individual with treatment that is
157 adequate and appropriate to the individual's conditions and needs. In the absence of the
158 required findings of the court after the hearing, the court shall forthwith dismiss the
159 proceedings.

160 (11) (a) The order of commitment shall designate the period for which the individual
161 shall be treated. When the individual is not under an order of commitment at the time of the
162 hearing, that period may not exceed six months without benefit of a review hearing. Upon
163 such a review hearing, to be commenced prior to the expiration of the previous order, an order
164 for commitment may be for an indeterminate period, if the court finds by clear and convincing
165 evidence that the required conditions in Subsection (10) will last for an indeterminate period.

166 (b) The court shall maintain a current list of all patients under its order of commitment.
167 That list shall be reviewed to determine those patients who have been under an order of
168 commitment for the designated period. At least two weeks prior to the expiration of the
169 designated period of any order of commitment still in effect, the court that entered the original

170 order shall inform the appropriate local mental health authority or its designee. The local
171 mental health authority or its designee shall immediately reexamine the reasons upon which the
172 order of commitment was based. If the local mental health authority or its designee determines
173 that the conditions justifying that commitment no longer exist, it shall discharge the patient
174 from involuntary commitment and immediately report that to the court. Otherwise, the court
175 shall immediately appoint two designated examiners and proceed under Subsections (8)
176 through (10).

177 (c) The local mental health authority or its designee responsible for the care of a patient
178 under an order of commitment for an indeterminate period, shall at six-month intervals
179 reexamine the reasons upon which the order of indeterminate commitment was based. If the
180 local mental health authority or its designee determines that the conditions justifying that
181 commitment no longer exist, that local mental health authority or its designee shall discharge
182 the patient from its custody and immediately report the discharge to the court. If the local
183 mental health authority or its designee determines that the conditions justifying that
184 commitment continue to exist, the local mental health authority or its designee shall send a
185 written report of those findings to the court. The patient and ~~his~~ the patient's counsel of
186 record shall be notified in writing that the involuntary commitment will be continued, the
187 reasons for that decision, and that the patient has the right to a review hearing by making a
188 request to the court. Upon receiving the request, the court shall immediately appoint two
189 designated examiners and proceed under Subsections (8) through (10).

190 (12) In the event that the designated examiners are unable, because a proposed patient
191 refuses to submit to an examination, to complete that examination on the first attempt, the
192 court shall fix a reasonable compensation to be paid to those designated examiners for their
193 services.

194 (13) Any person committed as a result of an original hearing or a person's legally
195 designated representative who is aggrieved by the findings, conclusions, and order of the court
196 entered in the original hearing has the right to a new hearing upon a petition filed with the court
197 within 30 days of the entry of the court order. The petition must allege error or mistake in the

198 findings, in which case the court shall appoint three impartial designated examiners previously
199 unrelated to the case to conduct an additional examination of the patient. The new hearing
200 shall, in all other respects, be conducted in the manner otherwise permitted.

201 (14) Costs of all proceedings under this section shall be paid by the county in which the
202 proposed patient resides or is found.