

1 **MENTAL HEALTH COMMITMENT AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Robert F. Montgomery**

5 AN ACT RELATING TO THE DIVISION OF MENTAL HEALTH, LOCAL MENTAL
6 HEALTH AUTHORITIES, AND THE CODE OF CRIMINAL PROCEDURE; REMOVING THE
7 REQUIREMENT OF FINDING THAT A PERSON IS AN "IMMEDIATE" DANGER TO SELF
8 OR OTHERS FOR CIVIL COMMITMENT AND SPECIFIED CRIMINAL COMMITMENTS;
9 AND FURTHER AMENDING CRITERIA FOR CIVIL COMMITMENT.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **62A-12-234**, as last amended by Chapter 285, Laws of Utah 1993

13 **77-16a-104**, as last amended by Chapter 254, Laws of Utah 1995

14 **77-16a-201**, as enacted by Chapter 171, Laws of Utah 1992

15 This act enacts uncodified material.

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

17 Section 1. Section **62A-12-234** is amended to read:

18 **62A-12-234. Involuntary commitment under court order -- Examination -- Hearing**
19 **-- Power of court -- Findings required -- Costs.**

20 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
21 older may be commenced by filing a written application with the district court of the county in
22 which the proposed patient resides or is found, by a responsible person who has reason to know
23 of the condition or circumstances of the proposed patient which lead to the belief that the
24 individual is mentally ill and should be involuntarily committed. That application shall be
25 accompanied by:

26 (a) a certificate of a licensed physician or a designated examiner stating that within a
27 seven-day period immediately preceding the certification the physician or designated examiner has

28 examined the individual, and that he is of the opinion that the individual is mentally ill and should
29 be involuntarily committed; or

30 (b) a written statement by the applicant that the individual has been requested to but has
31 refused to submit to an examination of mental condition by a licensed physician or designated
32 examiner. That application shall be sworn to under oath and shall state the facts upon which the
33 application is based.

34 (2) Prior to issuing a judicial order, the court may require the applicant to consult with the
35 appropriate local mental health authority, or may direct a mental health professional from that local
36 mental health authority to interview the applicant and the proposed patient to determine the
37 existing facts and report them to the court.

38 (3) If the court finds from the application, from any other statements under oath, or from
39 any reports from a mental health professional that there is a reasonable basis to believe that the
40 proposed patient's mental condition and [~~immediate~~] § **SUBSTANTIAL** § danger to himself, others,
40a or property requires

41 involuntary commitment pending examination and hearing; or, if the proposed patient has refused
42 to submit to an interview with a mental health professional as directed by the court or to go to a
43 treatment facility voluntarily, the court may issue an order, directed to a mental health officer or
44 peace officer, to immediately place the proposed patient in the custody of a local mental health
45 authority or in a temporary emergency facility as provided in Section 62A-12-237 to be detained
46 for the purpose of examination. Within 24 hours of the issuance of the order for examination, a
47 local mental health authority or its designee shall report to the court, orally or in writing, whether
48 the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to
49 become a voluntary patient under Section 62A-12-228, and whether treatment programs are
50 available and acceptable without court proceedings. Based on that information, the court may,
51 without taking any further action, terminate the proceedings and dismiss the application. In any
52 event, if the examiner reports orally, he shall immediately send the report in writing to the clerk
53 of the court.

54 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
55 the allegations of the application and any reported facts, together with a copy of any official order
56 of detention, shall be provided by the court to a proposed patient prior to, or upon, placement in
57 the custody of a local mental health authority or, with respect to any individual presently in the
58 custody of a local mental health authority whose status is being changed from voluntary to

59 involuntary, upon the filing of an application for that purpose with the court. A copy of that order
60 of detention shall be maintained at the place of detention.

61 (5) Notice of commencement of those proceedings shall be provided by the court as soon
62 as practicable to the applicant, any legal guardian, any immediate adult family members, legal
63 counsel for the parties involved, and any other persons whom the proposed patient or the court
64 shall designate. That notice shall advise those persons that a hearing may be held within the time
65 provided by law. If the patient has refused to permit release of information necessary for
66 provisions of notice under this subsection, the extent of notice shall be determined by the court.

67 (6) Proceedings for commitment of an individual under the age of 18 years to the division
68 may be commenced by filing a written application with the juvenile court in accordance with the
69 provisions of Part 2A.

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

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

81 (b) A time shall be set for a hearing to be held within ten court days of the appointment
82 of the designated examiners, unless those examiners or a local mental health authority or its
83 designee informs the court prior to that hearing date that the patient is not mentally ill, that he has
84 agreed to become a voluntary patient under Section 62A-12-228, or that treatment programs are
85 available and acceptable without court proceedings, in which event the court may, without taking
86 any further action, terminate the proceedings and dismiss the application.

87 (9) (a) Prior to the hearing, an opportunity to be represented by counsel shall be afforded
88 to every proposed patient, and if neither the patient nor others provide counsel, the court shall
89 appoint counsel and allow him sufficient time to consult with the patient prior to the hearing. In

90 the case of an indigent patient, the payment of reasonable attorneys' fees for counsel, as determined
91 by the court, shall be made by the county in which the patient resides or was found.

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

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

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

103 (e) The court shall receive all relevant and material evidence which is offered, subject to
104 the rules of evidence.

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

107 (i) the detention order;

108 (ii) admission notes;

109 (iii) the diagnosis;

110 (iv) any doctors' orders;

111 (v) progress notes;

112 (vi) nursing notes; and

113 (vii) medication records pertaining to the current commitment.

114 That information shall also be supplied to the patient's counsel at the time of the hearing,
115 and at any time prior to the hearing upon request.

116 (10) The court shall order commitment of an individual who is 18 years of age or older to
117 a local mental health authority if, upon completion of the hearing and consideration of the record,
118 the court finds by clear and convincing evidence that:

119 (a) the proposed patient has a mental illness; **§ AND §**

120 (b) because of the proposed patient's mental illness he poses [~~an immediate~~] a substantial

121 danger ~~[of physical injury to others or]~~ to himself or others, which may include:

122 (i) the inability to provide the basic necessities of life such as food, clothing, and shelter

122a **§ ,TO A DEGREE THAT SIGNIFICANTLY AFFECTS HEALTH OR SAFETY [f] ,**

123 **if allowed to remain at liberty [f] § ;**

124 (ii) violent, threatening, or other endangering behavior which occurs as a result of the
125 person's mental illness; or

126 (iii) a currently relevant historical pattern indicating that without treatment the person will
127 suffer severe and abnormal mental or emotional distress, and will experience deterioration of his
128 ability to function in the least restrictive environment, thereby creating a substantial danger to
129 himself or others; § AND §

130 (c) the patient lacks the ability to engage in a rational decision-making process regarding
131 the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible
132 costs and benefits of treatment; § AND §

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

134 (e) the local mental health authority can provide the individual with treatment that is
135 adequate and appropriate to his conditions and needs. In the absence of the required findings of
136 the court after the hearing, the court shall forthwith dismiss the proceedings.

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

143 (b) The court shall maintain a current list of all patients under its order of commitment.
144 That list shall be reviewed to determine those patients who have been under an order of
145 commitment for the designated period. At least two weeks prior to the expiration of the designated
146 period of any order of commitment still in effect, the court that entered the original order shall
147 inform the appropriate local mental health authority or its designee. The local mental health
148 authority or its designee shall immediately reexamine the reasons upon which the order of
149 commitment was based. If the local mental health authority or its designee determines that the
150 conditions justifying that commitment no longer exist, it shall discharge the patient from
151 involuntary commitment and immediately report that to the court. Otherwise, the court shall

152 immediately appoint two designated examiners and proceed under Subsections (8) through (10).

153 (c) The local mental health authority or its designee responsible for the care of a patient
154 under an order of commitment for an indeterminate period, shall at six-month intervals reexamine
155 the reasons upon which the order of indeterminate commitment was based. If the local mental
156 health authority or its designee determines that the conditions justifying that commitment no longer
157 exist, that local mental health authority or its designee shall discharge the patient from its custody
158 and immediately report the discharge to the court. If the local mental health authority or its
159 designee determines that the conditions justifying that commitment continue to exist, the local
160 mental health authority or its designee shall send a written report of those findings to the court.
161 The patient and his counsel of record shall be notified in writing that the involuntary commitment
162 will be continued, the reasons for that decision, and that the patient has the right to a review
163 hearing by making a request to the court. Upon receiving the request, the court shall immediately
164 appoint two designated examiners and proceed under Subsections (8) through (10).

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

168 (13) Any person committed as a result of an original hearing or a person's legally
169 designated representative who is aggrieved by the findings, conclusions, and order of the court
170 entered in the original hearing has the right to a new hearing upon a petition filed with the court
171 within 30 days of the entry of the court order. The petition must allege error or mistake in the
172 findings, in which case the court shall appoint three impartial designated examiners previously
173 unrelated to the case to conduct an additional examination of the patient. The new hearing shall,
174 in all other respects, be conducted in the manner otherwise permitted.

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

177 Section 2. Section **77-16a-104** is amended to read:

178 **77-16a-104. Verdict of guilty and mentally ill -- Hearing to determine present mental**
179 **state.**

180 (1) Upon a verdict of guilty and mentally ill for the offense charged, or any lesser offense,
181 the court shall conduct a hearing to determine the defendant's present mental state.

182 (2) The court may order the department to examine the defendant to determine his mental

183 condition, and may receive the evidence of any public or private expert witness offered by the
184 defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that
185 examination only upon approval of the executive director.

186 (3) If the court finds by clear and convincing evidence that the defendant is currently
187 mentally ill, it shall impose any sentence that could be imposed under law upon a defendant who
188 is not mentally ill and who is convicted of the same offense, and:

189 (a) commit him to the department, in accordance with the provisions of Section
190 77-16a-202, if it finds by clear and convincing evidence that:

191 (i) because of his mental illness the defendant poses [~~an immediate physical~~] a substantial
192 danger to self or others, including jeopardizing his own or others' safety, health, or welfare if
193 placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of
194 life, such as food, clothing, and shelter, if placed on probation; and

195 (ii) the department is able to provide the defendant with treatment, care, custody, and
196 security that is adequate and appropriate to the defendant's conditions and needs. In order to insure
197 that the requirements of this subsection are met, the court shall notify the executive director of the
198 proposed placement and provide the department with an opportunity to evaluate the defendant and
199 make a recommendation to the court regarding placement prior to commitment;

200 (b) order probation in accordance with Section 77-16a-201; or

201 (c) if the requirements of Subsections (3)(a) and (b) are not met, place the defendant in the
202 custody of UDC.

203 (4) If the court finds that the defendant is not currently mentally ill, it shall sentence the
204 defendant as it would any other defendant.

205 (5) Expenses for examinations ordered under this section shall be paid in accordance with
206 Subsection 77-16a-103(5).

207 Section 3. Section **77-16a-201** is amended to read:

208 **77-16a-201. Probation.**

209 (1) (a) When the court proposes to place on probation a defendant who has pled or is found
210 guilty and mentally ill, it shall request UDC to provide a presentence investigation report regarding
211 whether probation is appropriate for that defendant and, if so, recommending a specific treatment
212 program. If the defendant is placed on probation, that treatment program shall be made a condition
213 of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

214 (b) The court may not place a mentally ill offender who has been convicted of a capital
215 offense on probation.

216 (2) The period of probation may be for no less than five years, or until the expiration of
217 the defendant's sentence, whichever occurs first. Probation may not be subsequently reduced by
218 the sentencing court without consideration of an updated report on the mental health status of the
219 defendant.

220 (3) (a) Treatment ordered by the court under this section may be provided by or under
221 contract with the department, a mental health facility, a local mental health authority, or, with the
222 approval of the sentencing court, any other public or private mental health provider.

223 (b) The entity providing treatment under this section shall file a report with the defendant's
224 probation officer at least every six months during the term of probation.

225 (c) Any request for termination of probation regarding a defendant who is receiving
226 treatment under this section shall include a current mental health report prepared by the treatment
227 provider.

228 (4) Failure to continue treatment or any other condition of probation, except by agreement
229 with the entity providing treatment and the sentencing court, is a basis for initiating probation
230 violation hearings.

231 (5) The court may not release a mentally ill offender into the community, as a part of
232 probation, if it finds by clear and convincing evidence that he:

233 (a) poses ~~[an immediate physical]~~ a substantial danger to himself or others, including
234 jeopardizing his own or others' safety, health, or welfare if released into the community; or

235 (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and
236 shelter, if released into the community.

237 (6) A mentally ill offender who is not eligible for release into the community under the
238 provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental
239 health facility.

240 Section 4. **Reporting requirements.**

241 § ~~[On or before November 1, 2000 and November 1, 2001, the division and local mental~~
242 health authorities shall cooperatively compile, analyze, and produce reports to the legislative
243 interim Health and Human Services Committee that contain the following information relating to
244 adults involuntarily civilly committed in this state after July 1, 2000:] §

245 § ~~[(1) the number of people committed to each local mental health authority in the state;~~
 246 ~~— (2) the number of people committed pursuant to each individual commitment criterion,~~
 247 ~~and each combination or criteria identified in Subsections 62A-12-234(10)(b)(i), (ii), and (iii);~~
 248 ~~— (3) the initial placement for each person involuntarily committed, and the duration of that~~
 249 ~~placement;~~
 250 ~~— (4) all subsequent placements for each person involuntarily committed during the period~~
 251 ~~of commitment, and the duration of each subsequent placement;~~
 252 ~~— (5) the total length of each involuntary commitment, including extensions provided for by~~
 253 ~~any subsequent orders of commitment; and~~
 254 ~~— (6) an evaluation of the affect that changes to the civil commitment laws provided for by~~
 255 ~~this act have had on persons who are mentally ill and who have been committed to local mental~~
 256 ~~health authorities since May 1, 2000, the effective date of this act.] ON OR BEFORE JULY 1, 2000, THE~~
 256a ~~DIVISION OF MENTAL HEALTH SHALL SIGN A MEMORANDUM OF AGREEMENT WITH THE STATE'S~~
 256b ~~DESIGNATED PROTECTION AND ADVOCACY AGENCY WHICH SHALL PROVIDE FOR~~
 256c ~~COMPILATION,~~
 256d ~~ANALYSIS, AND REPORTING OF INFORMATION RELATING TO ADULTS INVOLUNTARILY CIVILLY~~
 256e ~~COMMITTED IN THIS STATE AFTER JULY 1, 2000. THOSE REPORTS SHALL BE DUE TO THE~~
 256f ~~PROTECTION AND ADVOCACY AGENCY BY NOVEMBER 1, 2000, NOVEMBER 1, 2001, AND~~
 ~~NOVEMBER 1, 2002. §~~

Legislative Review Note

as of 2-7-00 7:08 AM

This legislation raises the following constitutional or statutory concerns:

Some courts have held that a finding of "immediate" or "imminent" danger to self or others is a constitutionally necessary prerequisite to involuntary civil commitment of a person. Other courts have held that the risk of dangerousness must be "relatively immediate", or that the risk of dangerous conduct be within the "reasonably foreseeable future".

However, there are some states whose civil commitment statutes do not require a finding of an "immediate" danger to self or others, and this legislation also removes the statutory requirement for determining that danger to self or others be "immediate".

Because of the legal and constitutional complexities of this issue and varying court opinions, there is a potential that this legislation could be challenged under the due process guarantees of both the United States Constitution and the Utah Constitution.

Office of Legislative Research and General Counsel