

CIVIL COMMITMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Margaret Dayton

LONG TITLE

Committee Note:

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill amends Title 62A, Chapter 15, Substance Abuse and Mental Health Act, by including harmful sexual conduct as grounds for a civil commitment.

Highlighted Provisions:

This bill:

- ▶ defines the term "harmful sexual conduct";
- ▶ amends the definition of "substantial danger";
- ▶ amends the process for civil commitment; and
- ▶ makes technical changes.

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 2003, Chapters 22 and 303

62A-15-631, as last amended by Laws of Utah 2011, Chapter 366



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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:

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

(2) "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.

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

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

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

(a) sexual intercourse;

(b) penetration, however slight, of the genital or anal opening of the individual;

(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth \hat{H} → [of] or ← \hat{H} anus of either individual, regardless of the gender of either participant; or

(d) any sexual act causing substantial emotional injury or bodily pain.

59 ~~[(5)]~~ (6) "Institution" means a hospital, or a health facility licensed under the
60 provisions of Section 26-21-9.

61 ~~[(6)]~~ (7) "Licensed physician" means an individual licensed under the laws of this state
62 to practice medicine, or a medical officer of the United States government while in this state in
63 the performance of official duties.

64 ~~[(7)]~~ (8) "Local comprehensive community mental health center" means an agency or
65 organization that provides treatment and services to residents of a designated geographic area,
66 operated by or under contract with a local mental health authority, in compliance with state
67 standards for local comprehensive community mental health centers.

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

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

74 ~~[(8)]~~ (11) "Mental illness" means a psychiatric disorder as defined by the current
75 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
76 American Psychiatric Association which substantially impairs a person's mental, emotional,
77 behavioral, or related functioning.

78 ~~[(11)]~~ (12) "Patient" means an individual under commitment to the custody or to the
79 treatment services of a local mental health authority.

80 ~~[(12)]~~ (13) "Serious bodily injury" means bodily injury which involves a substantial
81 risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
82 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

83 ~~[(13)]~~ (14) "Substantial danger" means the person, by his or her behavior, due to
84 mental illness:

85 (a) is at serious risk to:

86 (i) commit suicide~~[-];~~

87 (ii) inflict serious bodily injury on himself or herself; or

88 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or
89 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

90 (b) is at serious risk to cause or attempt to cause serious bodily injury[;or] or engage in
91 harmful sexual conduct.

92 [~~(c) has inflicted or attempted to inflict serious bodily injury on another.~~]

93 [~~(14)~~] (15) "Treatment" means psychotherapy, medication, including the administration
94 of psychotropic medication, and other medical treatments that are generally accepted medical
95 and psychosocial interventions for the purpose of restoring the patient to an optimal level of
96 functioning in the least restrictive environment.

97 Section 2. Section **62A-15-631** is amended to read:

98 **62A-15-631. Involuntary commitment under court order -- Examination --**
99 **Hearing -- Power of court -- Findings required -- Costs.**

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

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

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

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

113 (ii) is sworn to under oath; and

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

115 (2) Before issuing a judicial order, the court may require the applicant to consult with
116 the appropriate local mental health authority, or may direct a mental health professional from
117 that local mental health authority to interview the applicant and the proposed patient to
118 determine the existing facts and report them to the court.

119 (3) If the court finds from the application, from any other statements under oath, or
120 from any reports from a mental health professional that there is a reasonable basis to believe

121 that the proposed patient has a mental illness which poses a substantial danger, as defined in
122 Section 62A-15-602, to self[;] or others[~~;~~ ~~or property~~] requiring involuntary commitment
123 pending examination and hearing; or, if the proposed patient has refused to submit to an
124 interview with a mental health professional as directed by the court or to go to a treatment
125 facility voluntarily, the court may issue an order, directed to a mental health officer or peace
126 officer, to immediately place the proposed patient in the custody of a local mental health
127 authority or in a temporary emergency facility as provided in Section 62A-15-634 to be
128 detained for the purpose of examination. Within 24 hours of the issuance of the order for
129 examination, a local mental health authority or its designee shall report to the court, orally or in
130 writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient
131 has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment
132 programs are available and acceptable without court proceedings. Based on that information,
133 the court may, without taking any further action, terminate the proceedings and dismiss the
134 application. In any event, if the examiner reports orally, the examiner shall immediately send
135 the report in writing to the clerk of the court.

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

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

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

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

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

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

165 (b) The examiner shall inform the patient if not represented by an attorney that, if
166 desired, the patient does not have to say anything, the nature and reasons for the examination,
167 that it was ordered by the court, that any information volunteered could form part of the basis
168 for his or her involuntary commitment, and that findings resulting from the examination will be
169 made available to the court.

170 (c) A time shall be set for a hearing to be held within 10 calendar days of the
171 appointment of the designated examiners, unless those examiners or a local mental health
172 authority or its designee informs the court prior to that hearing date that the patient is not
173 mentally ill, that the patient has agreed to become a voluntary patient under Section
174 62A-15-625, or that treatment programs are available and acceptable without court
175 proceedings, in which event the court may, without taking any further action, terminate the
176 proceedings and dismiss the application.

177 (9) (a) Before the hearing, an opportunity to be represented by counsel shall be
178 afforded to every proposed patient, and if neither the patient nor others provide counsel, the
179 court shall appoint counsel and allow counsel sufficient time to consult with the patient before
180 the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for
181 counsel, as determined by the court, shall be made by the county in which the patient resides or
182 was found.

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

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

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

194 (e) The court shall consider all relevant historical and material information which is
195 offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah
196 Rules of Evidence.

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

199 (A) the detention order;

200 (B) admission notes;

201 (C) the diagnosis;

202 (D) any doctors' orders;

203 (E) progress notes;

204 (F) nursing notes; and

205 (G) medication records pertaining to the current commitment.

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

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

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

213 (b) because of the proposed patient's mental illness the proposed patient poses a

214 substantial danger, as defined in Section 62A-15-602, ~~[of physical injury]~~ to self or others,
215 which may include the inability to provide the basic necessities of life such as food, clothing,
216 and shelter, if allowed to remain at liberty;

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

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

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

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

232 (b) The court shall maintain a current list of all patients under its order of commitment.
233 That list shall be reviewed to determine those patients who have been under an order of
234 commitment for the designated period. At least two weeks prior to the expiration of the
235 designated period of any order of commitment still in effect, the court that entered the original
236 order shall inform the appropriate local mental health authority or its designee. The local
237 mental health authority or its designee shall immediately reexamine the reasons upon which the
238 order of commitment was based. If the local mental health authority or its designee determines
239 that the conditions justifying that commitment no longer exist, it shall discharge the patient
240 from involuntary commitment and immediately report that to the court. Otherwise, the court
241 shall immediately appoint two designated examiners and proceed under Subsections (8)
242 through (10).

243 (c) The local mental health authority or its designee responsible for the care of a patient
244 under an order of commitment for an indeterminate period, shall at six-month intervals

245 reexamine the reasons upon which the order of indeterminate commitment was based. If the
246 local mental health authority or its designee determines that the conditions justifying that
247 commitment no longer exist, that local mental health authority or its designee shall discharge
248 the patient from its custody and immediately report the discharge to the court. If the local
249 mental health authority or its designee determines that the conditions justifying that
250 commitment continue to exist, the local mental health authority or its designee shall send a
251 written report of those findings to the court. The patient and his counsel of record shall be
252 notified in writing that the involuntary commitment will be continued, the reasons for that
253 decision, and that the patient has the right to a review hearing by making a request to the court.
254 Upon receiving the request, the court shall immediately appoint two designated examiners and
255 proceed under Subsections (8) through (10).

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

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

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

Legislative Review Note
as of 10-3-11 2:15 PM

Office of Legislative Research and General Counsel