

Representative Derek E. Brown proposes the following substitute bill:

INVOLUNTARY FEEDING AND HYDRATION OF INMATES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure by authorizing correctional facilities to involuntarily feed and hydrate prisoners who refuse sustenance and to petition the court to order involuntary feeding or hydrating of prisoners.

Highlighted Provisions:

This bill:

- ▶ authorizes the correctional facility administrator to petition the court for an order to administer food or fluids to a prisoner by involuntary means;
- ▶ provides that the court shall hold a hearing within two business days of receiving a petition from a correctional facility administrator to administer food or fluids to a prisoner by involuntary means;
- ▶ provides that the prisoner has the right to attend the hearing, testify before the court, present evidence, and cross-examine witnesses;
- ▶ requires that any involuntary feeding or hydration by the correctional facility be conducted under medical supervision and in a reasonable manner; and
- ▶ provides exceptions to the provisions of this bill for medically imposed fasts or religious fasts of reasonable duration.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **77-16b-101**, Utah Code Annotated 1953

32 **77-16b-102**, Utah Code Annotated 1953

33 **77-16b-103**, Utah Code Annotated 1953

34 **77-16b-104**, Utah Code Annotated 1953

35 **77-16b-105**, Utah Code Annotated 1953



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

38 Section 1. Section **77-16b-101** is enacted to read:

39 **CHAPTER 16b. INVOLUNTARY FEEDING AND HYDRATION OF INMATES**

40 **77-16b-101. Title.**

41 This chapter is known as the "Involuntary Feeding and Hydration of Inmates."

42 Section 2. Section **77-16b-102** is enacted to read:

43 **77-16b-102. Definitions.**

44 As used in this chapter:

45 (1) "Correctional facility" means a county jail or secure correctional facility as defined
46 by Section 64-13-1.

47 (2) "Correctional facility administrator" means a county sheriff in charge of a county
48 jail or a designee of the executive director of the Utah Department of Corrections.

49 (3) "Medical supervision" means under the direction of a licensed physician, physician
50 assistant, or nurse practitioner.

51 (4) "Mental health therapist" has the same definition as in Section 58-60-102.

52 (5) "Prisoner" means any person who is a pretrial detainee or has been committed to
53 the custody of a sheriff or the Utah Department of Corrections, and who is physically housed in
54 a correctional facility.

55 Section 3. Section **77-16b-103** is enacted to read:

56 **77-16b-103. Involuntary feeding or hydration of prisoners -- Petition procedures,**

57 **venue -- Prisoner rights.**

58 (1) A correctional facility administrator may petition the district court where the
59 correctional facility is located for an order permitting the involuntary feeding or hydration of
60 any prisoner who is likely to suffer severe harm or death by refusing to accept sufficient
61 nutrition or hydration.

62 (2) Prior to the filing of a petition under this section, a mental health therapist who is
63 designated by the correctional facility administrator shall conduct a mental health evaluation of
64 the subject prisoner.

65 (3) Upon the filing of a petition, the district court shall hold a hearing within two
66 working days. The court:

67 (a) shall confidentially review the prisoner's medical and mental health records as they
68 are available;

69 (b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence,
70 concerning the circumstances of the prisoner's lack of nutrition or hydration; and

71 (c) may exclude from the hearing any person whose presence is not necessary for the
72 purposes of the hearing, due to the introduction of personal medical and mental health
73 evidence.

74 (4) After conducting the hearing under Subsection (3), the district court shall issue an
75 order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of
76 evidence that:

77 (a) (i) the prisoner is likely to suffer severe harm or death by refusing to accept
78 sufficient nutrition or hydration; and

79 (ii) the correctional facility's medical or penological objectives are valid and outweigh
80 the prisoner's right to refuse treatment; or

81 (b) the prisoner is refusing sufficient nutrition or hydration with the intent to obstruct
82 or delay any judicial or administrative proceeding pending against the prisoner.

83 (5) The district court shall state its findings of fact and conclusions of law on the
84 record.

85 (6) The correctional facility administrator shall serve copies of the petition and a notice
86 of the district court hearing on the prisoner and the prisoner's counsel, if the prisoner is
87 represented by counsel, at least 48 hours in advance of the hearing under Subsection (3).

88 (7) The prisoner has the right to attend the hearing, testify, present evidence, and
89 cross-examine witnesses.

90 Section 4. Section **77-16b-104** is enacted to read:

91 **77-16b-104. Involuntary feeding or hydration of prisoners -- Standards,**
92 **continuing jurisdiction, and records.**

93 (1) Any involuntary nutrition or hydration of a prisoner pursuant to this chapter shall
94 be conducted under immediate medical supervision and in a medically recognized and
95 acceptable manner.

96 (2) Upon the filing of a petition pursuant to Section 77-16b-102, the court has the
97 continuing jurisdiction to review the prisoner's need for involuntary nutrition or hydration as
98 long as the prisoner remains in custody of the correctional facility.

99 (3) A correctional facility shall maintain records of any involuntary feeding or
100 hydration of prisoners under this chapter.

101 (a) The records are classified as "controlled" under Section 63G-2-304 of the
102 Governmental Records Access and Management Act.

103 (b) All medical or mental health records submitted to the court under this chapter shall
104 be kept under seal.

105 Section 5. Section **77-16b-105** is enacted to read:

106 **77-16b-105. Involuntary feeding or hydration of prisoners -- Exceptions.**

107 This chapter does not apply to medically imposed fasts for the purpose of conducting
108 medical procedures or tests, or to religious fasts of reasonable duration.