

26-6b-4 Judicial review by the district court -- Required notice -- Representation by counsel -- Conduct of proceedings.

- (1) The provisions of this section and Sections 26-6b-5 through 26-6b-7 apply if a department issues an order for restriction, and:
 - (a) an individual subject to the order of restriction refuses to consent to the order of restriction;
 - (b) an individual subject to an order of restriction has withdrawn consent to an order of restriction under the provisions of Subsection 26-6b-3.1(1)(b)(iv)(B); or
 - (c) the department chooses to not attempt to obtain consent to an order of restriction and files an action for judicial review of the order of restriction.
- (2)
 - (a) If the individual who is subject to an order of restriction is in custody, the department, which is the petitioner, shall provide to the individual written notice of the petition for judicial review of the order of restriction and hearings held pursuant to Sections 26-6b-5 through 26-6b-7 as soon as practicable, and shall send the notice to the legal guardian, legal counsel for the parties involved, and any other persons and immediate adult family members whom the individual or the district court designates. The notice shall advise these persons that a hearing may be held within the time provided by this chapter.
 - (b) If the individual has refused to permit release of information necessary for the provision of notice under this Subsection (2), the extent of notice shall be determined by the district court.
 - (c) Notwithstanding the notice requirement in Subsection (2)(a), if the court determines that written notice to each individual in a group of individuals subject to an order of restriction is not practical considering the circumstances of the threat to public health, the court may order the department to provide notice to the individual or group of individuals in a manner determined by the court.
- (3)
 - (a) If the individual who is subject to an order of restriction is in custody, he shall be afforded an opportunity to be represented by counsel. If neither the individual nor others provide for counsel, the district court shall appoint counsel and allow counsel sufficient time to consult with the individual prior to the hearing. If the individual is indigent, the payment of reasonable attorney fees for counsel, as determined by the district court, shall be made by the county in which the individual resides or was found.
 - (b) The parties may appear at the hearings, to testify, and to present and cross-examine witnesses. The district court may, in its discretion, receive the testimony of any other individual.
 - (c) The district court may allow a waiver of the individual's right to appear only for good cause shown, and that cause shall be made a part of the court record.
 - (d) The district court may order that the individual participate in the hearing by telephonic or other electronic means if the individual's condition poses a health threat to those who physically attend the hearing or to others if the individual is transported to the court.
- (4) The district court may, in its discretion, order that the individual be moved to a more appropriate treatment, quarantine, or isolation facility outside of its jurisdiction, and may transfer the proceedings to any other district court within this state where venue is proper, provided that the transfer will not be adverse to the legal interests of the individual.
- (5) All persons to whom notice is required to be given may attend the hearings. The district court may exclude from the hearing all persons not necessary for the conduct of the proceedings.
- (6) All hearings shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the health of the individual or others required to participate in the hearing.

- (7) The district court shall receive all relevant and material evidence which is offered, subject to Utah Rules of Evidence.
- (8) The district court may order law enforcement to assist the petitioner in locating the individuals subject to restriction and enforcing the order of restriction.

Amended by Chapter 115, 2008 General Session