Part 7
Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health

62A-15-701 Definitions.

As used in this part:

(1) "Child" means a person under 18 years of age.

(2) "Commit" and "commitment" mean the transfer of physical custody in accordance with the requirements of this part.

(3) "Legal custody" means:

(a) the right to determine where and with whom the child shall live;

(b) the right to participate in all treatment decisions and to consent or withhold consent for treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and

(c) the right to authorize surgery or other extraordinary medical care.

(4) "Physical custody" means:

(a) placement of a child in any residential or inpatient setting;

(b) the right to physical custody of a child;

(c) the right and duty to protect the child; and

(d) the duty to provide, or insure that the child is provided with, adequate food, clothing, shelter, and ordinary medical care.

(5) "Residential" means any out-of-home placement made by a local mental health authority, but does not include out-of-home respite care.

(6) "Respite care" means temporary, periodic relief provided to parents or guardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

Amended by Chapter 195, 2003 General Session

62A-15-702 Treatment and commitment of minors in the public mental health system.

A child is entitled to due process proceedings, in accordance with the requirements of this part, whenever the child:

(1) may receive or receives services through the public mental health system and is placed, by a local mental health authority, in a physical setting where his liberty interests are restricted, including residential and inpatient placements; or

(2) receives treatment in which a constitutionally protected privacy or liberty interest may be affected, including the administration of antipsychotic medication, electroshock therapy, and psychosurgery.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-703 Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Subsection 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5)

(a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g)

(i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10)

(a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

(i) the original petition for commitment;

(ii) admission notes;
(iii) diagnosis;
(iv) physicians' orders;
(v) progress notes;
(vi) nursing notes; and
(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12)

(a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:
(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or
(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.
(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.
(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.
(14) Even though a child has been committed to the physical custody of a local mental health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Amended by Chapter 3, 2008 General Session

62A-15-704 Invasive treatment -- Due process proceedings.
(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery.
(2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.
(3)
(a) The division shall promulgate rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:
(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);
(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and
(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Amended by Chapter 382, 2008 General Session

62A-15-705 Commitment proceedings in juvenile court -- Criteria -- Custody.

(1)
(a) Subject to Subsection (1)(b), commitment proceedings for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.
(b) Commitment proceedings under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.

(2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:
(a) the child has a mental illness, as defined in Subsection 62A-15-602(8);
(b) the child demonstrates a risk of harm to himself or others;
(c) the child is experiencing significant impairment in his ability to perform socially;
(d) the child will benefit from the proposed care and treatment; and
(e) there is no appropriate less restrictive alternative.

(3) The local mental health authority has an affirmative duty to conduct periodic reviews of children committed to its custody pursuant to this section, and to release any child who has sufficiently improved so that the local mental health authority or its designee determines that commitment is no longer appropriate.

Amended by Chapter 195, 2003 General Session

62A-15-706 Parent advocate.

The division shall establish the position of a parent advocate to assist parents of children with a mental illness who are subject to the procedures required by this part.

Amended by Chapter 366, 2011 General Session

62A-15-707 Confidentiality of information and records -- Exceptions -- Penalty.

(1) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, all certificates, applications, records, and reports made for the purpose of this part that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except as follows:
(a) the individual identified consents after reaching 18 years of age;
(b) the child's parent or legal guardian consents;
(c) disclosure is necessary to carry out any of the provisions of this part; or
(d) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.

(2) A person who violates any provision of this section is guilty of a class B misdemeanor.

Amended by Chapter 382, 2008 General Session

62A-15-708 Mechanical restraints -- Clinical record.

Mechanical restraints may not be applied to a child unless it is determined, by the local mental health authority or its designee in conjunction with the child's current treating mental health professional, that they are required by the needs of that child. Every use of a mechanical restraint and the reasons for that use shall be made a part of the child's clinical record, under the signature of the local mental health authority, its designee, and the child's current treating mental health professional.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-709 Habeas corpus.

Any child committed in accordance with Section 62A-15-703 is entitled to a writ of habeas corpus upon proper petition by himself or next of friend to the district court in the district in which he is detained.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-710 Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the specific rules of the division, and except to the extent that the local mental health authority or its designee, in conjunction with the child's current treating mental health professional, determines that it is necessary for the welfare of the person to impose restrictions, every child committed to the physical custody of a local mental health authority under Section 62A-15-703 is entitled to:
  (a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside of the facility;
  (b) receive visitors; and
  (c) exercise his civil rights.
(2) When any right of a child is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the child's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division.
(3) Notwithstanding any limitations authorized under this section on the right of communication, each child committed to the physical custody of a local mental health authority is entitled to communicate by sealed mail with his attorney, the local mental health authority, its designee, his current treating mental health professional, and the court, if commitment was court ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.
(4) Each local mental health authority shall provide appropriate and reasonable means and arrangements for informing children and their parents or legal guardians of their rights as provided in this part, and for assisting them in making and presenting requests for release.
(5) All local mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-711 Standards for care and treatment.

Every child is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-712 Responsibilities of the Division of Substance Abuse and Mental Health.

(1) The division shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.
(2) Because the division must, under Section 62A-15-103, contract with, review, approve, and oversee local mental health authority plans, and withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:
  (a) require each local mental health authority to submit its plan to the division by May 1 of each year; and
  (b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider.
(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether or not:
  (a) public funds allocated to local mental health authorities are consistent with services rendered and outcomes reported by it or its contract provider; and
  (b) each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.
(4) The Legislature may refuse to appropriate funds to the division if the division fails to comply with the procedures and requirements of this section.

Amended by Chapter 167, 2013 General Session

62A-15-713 Contracts with local mental health authorities -- Provisions.

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:
(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
(2) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:
  (a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers,

directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue;

(3) the local mental health authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;

(6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and

(7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

Amended by Chapter 71, 2005 General Session