

**62A-5-312 Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.**

- (1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:
  - (a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or
  - (b) a written statement by the petitioner that:
    - (i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;
    - (ii) is under oath; and
    - (iii) sets forth the facts on which the statement is based.
- (2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.
- (3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:
  - (a) poses an immediate danger of physical injury to self or others;
  - (b) requires involuntary commitment pending examination and hearing;
  - (c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or
  - (d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.
- (4)
  - (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:
    - (i) whether the director or his designee believes that the individual has an intellectual disability; and
    - (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.
  - (b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

- (5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.
- (6)
  - (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:
    - (i) the individual to be committed;
    - (ii) the applicant;
    - (iii) any legal guardian of the individual;
    - (iv) adult members of the individual's immediate family;
    - (v) legal counsel of the individual to be committed, if any;
    - (vi) the division; and
    - (vii) any other person to whom the individual requests, or the court designates, notice to be given.
  - (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.
- (7) That notice shall:
  - (a) set forth the allegations of the petition and all supporting facts;
  - (b) be accompanied by a copy of any detention order issued under Subsection (3); and
  - (c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.
- (8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:
  - (a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and
  - (b) the transfer will not be adverse to the interests of the individual.
- (9)
  - (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual disability professionals. The examinations shall be conducted:
    - (i) separately;
    - (ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and
    - (iii) within a reasonable period of time after appointment of the examiners by the court.
  - (b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:
    - (i) the individual does not have an intellectual disability; or
    - (ii) treatment programs are available and will be used by the individual without court proceedings.
- (10)

- (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.
  - (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.
- (11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.
- (12)
- (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.
  - (b) The court may, in its discretion:
    - (i) receive the testimony of any other person;
    - (ii) allow a waiver of the right to appear only for good cause shown;
    - (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and
    - (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.
  - (c) The hearing 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 individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.
- (13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:
- (a) the individual to be committed has an intellectual disability;
  - (b) because of the individual's intellectual disability one or more of the following conditions exist:
    - (i) the individual poses an immediate danger of physical injury to self or others;
    - (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or
    - (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;
  - (c) there is no appropriate, less restrictive alternative reasonably available; and
  - (d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.
- (14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.
- (15)
- (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment

period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

- (b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.
- (16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.
- (17)
  - (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.
  - (b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.
  - (c) The staff of the division shall immediately:
    - (i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;
    - (ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and
    - (iii) immediately inform the court of any discharge.
  - (d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.
  - (e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.
- (18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Amended by Chapter 366, 2011 General Session