

1 **WEAPONS RESTRICTIONS FOR MENTALLY**

2 **ILL PERSONS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Gary F. Cox**

6 AN ACT RELATING TO PUBLIC SAFETY AND HUMAN SERVICES; ELIMINATING THE
7 REQUIREMENT THAT THE PERSON BE AN "IMMEDIATE" DANGER TO HIMSELF AND
8 OTHERS; AND REQUIRING THE BUREAU OF CRIMINAL IDENTIFICATION TO CHECK
9 COURT RECORDS FOR CURRENT COMMITMENTS AS PART OF A BACKGROUND
10 CHECK FOR THE PURCHASE OF A FIREARM.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **53-10-208**, as last amended by Chapter 187 and renumbered and amended by Chapter 263,
14 Laws of Utah 1998

15 **62A-12-234**, as last amended by Chapter 285, Laws of Utah 1993

16 **62A-12-247**, as last amended by Chapter 161, Laws of Utah 1989

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

18 Section 1. Section **53-10-208** is amended to read:

19 **53-10-208. Definition -- Magistrates and court clerks to supply information --**
20 **Offenses included on statewide warrant system -- Transportation fee to be included --**
21 **Statewide warrant system responsibility -- Quality control -- Training -- Technical support**
22 **-- Transaction costs.**

23 (1) "Statewide warrant system" means the portion of the state court computer system that
24 is accessible by modem from the state mainframe computer and contains:

25 (a) records of criminal warrant information; and

26 (b) after notice and hearing, records of protective orders issued pursuant to:

27 (i) Title 30, Chapter 6, Cohabitant Abuse Act; or

28 (ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

29 (2) Every magistrate or clerk of a court responsible for court records in this state shall,
30 within 30 days of the disposition and on forms and in the manner provided by the division, furnish
31 the division with information pertaining to:

32 (a) all dispositions of criminal matters, including:

33 (i) guilty pleas[;];

34 (ii) convictions[;];

35 (iii) dismissals[;];

36 (iv) acquittals[;];

37 (v) ~~pleas held in abeyance[; or probations granted, within 30 days of the disposition and~~
38 ~~on forms and in the manner provided by the division];~~

39 (vi) judgments of not guilty by reason of insanity;

40 (vii) judgments of guilty and mentally ill;

41 (viii) findings of mental incompetence to stand trial;

42 (ix) current orders of civil commitment under the terms of Section 62A-12-234; or

43 (x) probations granted;

44 (b) the issuance, recall, cancellation, or modification of all warrants of arrest or
45 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within
46 one day of the action and in a manner provided by the division; and

47 (c) protective orders issued after notice and hearing, pursuant to:

48 (i) Title 30, Chapter 6, Cohabitant Abuse Act; or

49 (ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

50 (3) (a) (i) The division shall include on the statewide warrant system all warrants issued
51 for felony offenses and class A, B, and C misdemeanor offenses in the state.

52 (ii) For each offense the division shall indicate whether the magistrate ordered under
53 Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

54 (b) Infractions shall not be included on the statewide warrant system, including any
55 subsequent failure to appear warrants issued on an infraction.

56 (4) The division is the agency responsible for the statewide warrant system and shall:

57 (a) ensure quality control of all warrants of arrest or commitment and protective orders

58 contained in the statewide warrant system by conducting regular validation checks with every clerk

59 of a court responsible for entering the information on the system;

60 (b) upon the expiration of the protective orders and in the manner prescribed by the
61 division, purge information regarding protective orders described in Subsection (2)(c) within 30
62 days of the time after expiration;

63 (c) establish system procedures and provide training to all criminal justice agencies having
64 access to information contained on the state warrant system;

65 (d) provide technical support, program development, and systems maintenance for the
66 operation of the system; and

67 (e) pay data processing and transaction costs for state, county, and city law enforcement
68 agencies and criminal justice agencies having access to information contained on the state warrant
69 system.

70 (5) (a) Any data processing or transaction costs not funded by legislative appropriation
71 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

72 (b) This subsection supersedes any conflicting provision in Subsection (4)(e).

73 Section 2. Section **62A-12-234** is amended to read:

74 **62A-12-234. Involuntary commitment under court order -- Examination -- Hearing**
75 **-- Power of court -- Findings required -- Costs.**

76 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
77 older may be commenced by filing a written application with the district court of the county in
78 which the proposed patient resides or is found, by a responsible person who has reason to know
79 of the condition or circumstances of the proposed patient which lead to the belief that the
80 individual is mentally ill and should be involuntarily committed. That application shall be
81 accompanied by:

82 (a) a certificate of a licensed physician or a designated examiner stating that within a
83 seven-day period immediately preceding the certification the physician or designated examiner has
84 examined the individual, and that he is of the opinion that the individual is mentally ill and should
85 be involuntarily committed; or

86 (b) a written statement by the applicant that the individual has been requested to but has
87 refused to submit to an examination of mental condition by a licensed physician or designated
88 examiner. That application shall be sworn to under oath and shall state the facts upon which the
89 application is based.

90 (2) Prior to issuing a judicial order, the court may require the applicant to consult with the
91 appropriate local mental health authority, or may direct a mental health professional from that local
92 mental health authority to interview the applicant and the proposed patient to determine the
93 existing facts and report them to the court.

94 (3) If the court finds from the application, from any other statements under oath, or from
95 any reports from a mental health professional that there is a reasonable basis to believe that the
96 proposed patient's mental condition and [immediate] danger to himself, others, or property requires
97 involuntary commitment pending examination and hearing; or, if the proposed patient has refused
98 to submit to an interview with a mental health professional as directed by the court or to go to a
99 treatment facility voluntarily, the court may issue an order, directed to a mental health officer or
100 peace officer, to immediately place the proposed patient in the custody of a local mental health
101 authority or in a temporary emergency facility as provided in Section 62A-12-237 to be detained
102 for the purpose of examination. Within 24 hours of the issuance of the order for examination, a
103 local mental health authority or its designee shall report to the court, orally or in writing, whether
104 the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to
105 become a voluntary patient under Section 62A-12-228, and whether treatment programs are
106 available and acceptable without court proceedings. Based on that information, the court may,
107 without taking any further action, terminate the proceedings and dismiss the application. In any
108 event, if the examiner reports orally, he shall immediately send the report in writing to the clerk
109 of the court.

110 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
111 the allegations of the application and any reported facts, together with a copy of any official order
112 of detention, shall be provided by the court to a proposed patient prior to, or upon, placement in
113 the custody of a local mental health authority or, with respect to any individual presently in the
114 custody of a local mental health authority whose status is being changed from voluntary to
115 involuntary, upon the filing of an application for that purpose with the court. A copy of that order
116 of detention shall be maintained at the place of detention.

117 (5) Notice of commencement of those proceedings shall be provided by the court as soon
118 as practicable to the applicant, any legal guardian, any immediate adult family members, legal
119 counsel for the parties involved, and any other persons whom the proposed patient or the court
120 shall designate. That notice shall advise those persons that a hearing may be held within the time

121 provided by law. If the patient has refused to permit release of information necessary for
122 provisions of notice under this subsection, the extent of notice shall be determined by the court.

123 (6) Proceedings for commitment of an individual under the age of 18 years to the division
124 may be commenced by filing a written application with the juvenile court in accordance with the
125 provisions of Part 2A.

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

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

137 (b) A time shall be set for a hearing to be held within ten court days of the appointment
138 of the designated examiners, unless those examiners or a local mental health authority or its
139 designee informs the court prior to that hearing date that the patient is not mentally ill, that he has
140 agreed to become a voluntary patient under Section 62A-12-228, or that treatment programs are
141 available and acceptable without court proceedings, in which event the court may, without taking
142 any further action, terminate the proceedings and dismiss the application.

143 (9) (a) Prior to the hearing, an opportunity to be represented by counsel shall be afforded
144 to every proposed patient, and if neither the patient nor others provide counsel, the court shall
145 appoint counsel and allow him sufficient time to consult with the patient prior to the hearing. In
146 the case of an indigent patient, the payment of reasonable attorneys' fees for counsel, as determined
147 by the court, shall be made by the county in which the patient resides or was found.

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

152 and that cause shall be made a matter of court record.

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

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

159 (e) The court shall receive all relevant and material evidence which is offered, subject to
160 the rules of evidence.

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

- 163 (i) the detention order;
- 164 (ii) admission notes;
- 165 (iii) the diagnosis;
- 166 (iv) any doctors' orders;
- 167 (v) progress notes;
- 168 (vi) nursing notes; and
- 169 (vii) medication records pertaining to the current commitment.

170 That information shall also be supplied to the patient's counsel at the time of the hearing,
171 and at any time prior to the hearing upon request.

172 (10) The court shall order commitment of an individual who is 18 years of age or older to
173 a local mental health authority if, upon completion of the hearing and consideration of the record,
174 the court finds by clear and convincing evidence that:

- 175 (a) the proposed patient has a mental illness;
- 176 (b) because of the proposed patient's mental illness he poses an immediate danger of
177 physical injury to others or himself, which may include the inability to provide the basic necessities
178 of life such as food, clothing, and shelter, if allowed to remain at liberty;
- 179 (c) the patient lacks the ability to engage in a rational decision-making process regarding
180 the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible
181 costs and benefits of treatment;
- 182 (d) there is no appropriate less-restrictive alternative to a court order of commitment; and

183 (e) the local mental health authority can provide the individual with treatment that is
184 adequate and appropriate to his conditions and needs. In the absence of the required findings of
185 the court after the hearing, the court shall forthwith dismiss the proceedings.

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

192 (b) The court shall maintain a current list of all patients under its order of commitment.
193 That list shall be reviewed to determine those patients who have been under an order of
194 commitment for the designated period. At least two weeks prior to the expiration of the designated
195 period of any order of commitment still in effect, the court that entered the original order shall
196 inform the appropriate local mental health authority or its designee. The local mental health
197 authority or its designee shall immediately reexamine the reasons upon which the order of
198 commitment was based. If the local mental health authority or its designee determines that the
199 conditions justifying that commitment no longer exist, it shall discharge the patient from
200 involuntary commitment and immediately report that to the court. Otherwise, the court shall
201 immediately appoint two designated examiners and proceed under Subsections (8) through (10).

202 (c) The local mental health authority or its designee responsible for the care of a patient
203 under an order of commitment for an indeterminate period, shall at six-month intervals reexamine
204 the reasons upon which the order of indeterminate commitment was based. If the local mental
205 health authority or its designee determines that the conditions justifying that commitment no longer
206 exist, that local mental health authority or its designee shall discharge the patient from its custody
207 and immediately report the discharge to the court. If the local mental health authority or its
208 designee determines that the conditions justifying that commitment continue to exist, the local
209 mental health authority or its designee shall send a written report of those findings to the court.
210 The patient and his counsel of record shall be notified in writing that the involuntary commitment
211 will be continued, the reasons for that decision, and that the patient has the right to a review
212 hearing by making a request to the court. Upon receiving the request, the court shall immediately
213 appoint two designated examiners and proceed under Subsections (8) through (10).

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

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

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

226 Section 3. Section **62A-12-247** is amended to read:

227 **62A-12-247. Confidentiality of information and records -- Exceptions -- Penalty.**

228 (1) All certificates, applications, records, and reports made for the purpose of this part,
229 including those made on judicial proceedings for involuntary commitment, that directly or
230 indirectly identify a patient or former patient or an individual whose commitment has been sought
231 under this part, shall be kept confidential and may not be disclosed by any person except insofar
232 as:

233 (a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal
234 guardian shall consent;

235 (b) disclosure may be necessary to carry out [any of] the provisions of:

236 (i) this part; or

237 (ii) Section 53-10-208; or

238 (c) a court may direct, upon its determination that disclosure is necessary for the conduct
239 of proceedings before it, and that failure to make the disclosure would be contrary to the public
240 interest.

241 (2) A person who [~~violates any provision of~~] knowingly and intentionally discloses any
242 information not authorized by this section is guilty of a class B misdemeanor.

Legislative Review Note

as of 11-22-99 3:00 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.