

Senator Leonard M. Blackham proposes the following substitute bill:

**SUSAN GALL INVOLUNTARY
COMMITMENT AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

Karen Hale

Lyle W. Hillyard

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This act, in memory of Susan Jenkins Gall, modifies the process by which adults are involuntarily committed to mental health programs. It eliminates the "immediate danger" standard and provides for a "substantial danger" standard for the purposes of involuntary commitment, defines substantial danger, shortens the time period before a hearing when a person is being detained pending a hearing, and requires a report to the Health and Human Services Interim Committee. It also modifies the definition of mental illness, limits the new definition solely to involuntary commitments, and requires examiners to inform patients of specific rights.

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

AMENDS:

62A-15-103, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-602, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-631, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-701, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session



25 **62A-15-902**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth
26 Special Session

27 **62A-15-1001**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth
28 Special Session

29 This act enacts uncodified material.

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

31 Section 1. Section **62A-15-103** is amended to read:

32 **62A-15-103. Division -- Creation -- Responsibilities.**

33 (1) There is created the Division of Substance Abuse and Mental Health within the
34 department, under the administration and general supervision of the executive director, and,
35 with regard to its programs, under the policy direction of the board. The division is the
36 substance abuse authority and the mental health authority for this state.

37 (2) The division shall:

38 (a) (i) educate the general public regarding the nature and consequences of substance
39 abuse by promoting school and community-based prevention programs;

40 (ii) render support and assistance to public schools through approved school-based
41 substance abuse education programs aimed at prevention of substance abuse;

42 (iii) promote or establish programs for the prevention of substance abuse within the
43 community setting through community-based prevention programs;

44 (iv) cooperate and assist other organizations and private treatment centers for substance
45 abusers, by providing them with essential materials for furthering programs of prevention and
46 rehabilitation of actual and potential substance abusers; and

47 (v) promote or establish programs for education and certification of instructors to
48 educate persons convicted of driving under the influence of alcohol or drugs or driving with
49 any measurable controlled substance in the body;

50 (b) (i) collect and disseminate information pertaining to mental health; and

51 (ii) provide direction over the state hospital including approval of its budget,
52 administrative policy, and coordination of services with local service plans; ~~and~~

53 (iii) promulgate rules in accordance with the Title 63, Chapter 46a, Utah
54 Administrative Rulemaking Act, to educate families concerning mental illness and promote
55 family involvement, when appropriate, and with patient consent, in the treatment program of a

56 family member; and

57 (iv) promulgate rules in accordance with the Title 63, Chapter 46a, Utah
58 Administrative Rulemaking Act, to direct that all individuals receiving services through local
59 mental health authorities or the Utah State Hospital be informed about and, if desired,
60 provided assistance in completion of a declaration for mental health treatment in accordance
61 with Section 62A-15-1002; and

62 (c) (i) consult and coordinate with local substance abuse authorities and local mental
63 health authorities regarding programs and services;

64 (ii) provide consultation and other assistance to public and private agencies and groups
65 working on substance abuse and mental health issues;

66 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
67 medical and social agencies, public health authorities, law enforcement agencies, education and
68 research organizations, and other related groups;

69 (iv) promote or conduct research on substance abuse and mental health issues, and
70 submit to the governor and the Legislature recommendations for changes in policy and
71 legislation;

72 (v) receive, distribute, and provide direction over public funds for substance abuse and
73 mental health services;

74 (vi) monitor and evaluate programs provided by local substance abuse authorities and
75 local mental health authorities;

76 (vii) examine expenditures of any local, state, and federal funds;

77 (viii) monitor the expenditure of public funds by:

78 (A) local substance abuse authorities;

79 (B) local mental health authorities; and

80 (C) in counties where they exist, the private contract provider that has an annual or
81 otherwise ongoing contract to provide comprehensive substance abuse or mental health
82 programs or services for the local substance abuse authority or local mental health authorities;

83 (ix) contract with local substance abuse authorities and local mental health authorities
84 to provide a comprehensive continuum of services in accordance with board and division
85 policy, contract provisions, and the local plan;

86 (x) contract with private and public entities for special statewide or nonclinical services

87 according to board and division policy;

88 (xi) review and approve each local substance abuse authority's plan and each local
89 mental health authority's plan in order to ensure:

90 (A) a statewide comprehensive continuum of substance abuse services;

91 (B) a statewide comprehensive continuum of mental health services; and

92 (C) appropriate expenditure of public funds;

93 (xii) review and make recommendations regarding each local substance abuse
94 authority's contract with its provider of substance abuse programs and services and each local
95 mental health authority's contract with its provider of mental health programs and services to
96 ensure compliance with state and federal law and policy;

97 (xiii) monitor and ensure compliance with board and division policy and contract
98 requirements; and

99 (xiv) withhold funds from local substance abuse authorities, local mental health
100 authorities, and public and private providers for contract noncompliance, failure to comply
101 with division directives regarding the use of public funds, or for misuse of public funds or
102 monies.

103 (3) (a) The division may refuse to contract with and may pursue its legal remedies
104 against any local substance abuse authority or local mental health authority that fails, or has
105 failed, to expend public funds in accordance with state law, division policy, contract
106 provisions, or directives issued in accordance with state law.

107 (b) The division may withhold funds from a local substance abuse authority or local
108 mental health authority if the authority's contract with its provider of substance abuse or mental
109 health programs or services fails to comply with state and federal law or policy.

110 (4) Before reissuing or renewing a contract with any local substance abuse authority or
111 local mental health authority, the division shall review and determine whether the local
112 substance abuse authority or local mental health authority is complying with its oversight and
113 management responsibilities described in Sections 17A-3-601, 17A-3-603.5, 17A-3-701 and
114 17A-3-703. Nothing in this Subsection (4) may be used as a defense to the responsibility and
115 liability described in Section 17A-3-603.5 and to the responsibility and liability described in
116 Section 17A-3-703.

117 (5) In carrying out its duties and responsibilities, the division may not duplicate

118 treatment or educational facilities that exist in other divisions or departments of the state, but
119 shall work in conjunction with those divisions and departments in rendering the treatment or
120 educational services that those divisions and departments are competent and able to provide.

121 (6) (a) The division may accept in the name of and on behalf of the state donations,
122 gifts, devises, or bequests of real or personal property or services to be used as specified by the
123 donor.

124 (b) Those donations, gifts, devises, or bequests shall be used by the division in
125 performing its powers and duties. Any money so obtained shall be considered private
126 nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund
127 to be used by the division for substance abuse or mental health services. The state treasurer
128 may invest the fund and all interest shall remain with the fund.

129 (7) The division shall annually review with each local substance abuse authority and
130 each local mental health authority the authority's statutory and contract responsibilities
131 regarding:

132 (a) the use of public funds;

133 (b) oversight responsibilities regarding public funds; and

134 (c) governance of substance abuse and mental health programs and services.

135 Section 2. Section **62A-15-602** is amended to read:

136 **62A-15-602. Definitions.**

137 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
138 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
139 Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

140 (1) "Adult" means a person 18 years of age or older.

141 (2) "Commitment to the custody of a local mental health authority" means that an adult
142 is committed to the custody of the local mental health authority that governs the mental health
143 catchment area in which the proposed patient resides or is found.

144 (3) "Designated examiner" means a licensed physician familiar with severe mental
145 illness, preferably a psychiatrist, designated by the division as specially qualified by training or
146 experience in the diagnosis of mental or related illness or another licensed mental health
147 professional designated by the division as specially qualified by training and at least five years'
148 continual experience in the treatment of mental or related illness. At least one designated

149 examiner in any case shall be a licensed physician. No person who is the applicant, or who
150 signs the certification, under Section 62A-15-631 may be a designated examiner in the same
151 case.

152 (4) "Designee" means a physician who has responsibility for medical functions
153 including admission and discharge, an employee of a local mental health authority, or an
154 employee of an agency that has contracted with a local mental health authority to provide
155 mental health services under Section 17A-3-606.

156 (5) "Institution" means a hospital, or a health facility licensed under the provisions of
157 Section 26-21-9.

158 (6) "Licensed physician" means an individual licensed under the laws of this state to
159 practice medicine, or a medical officer of the United States government while in this state in
160 the performance of official duties.

161 (7) "Local comprehensive community mental health center" means an agency or
162 organization that provides treatment and services to residents of a designated geographic area,
163 operated by or under contract with a local mental health authority, in compliance with state
164 standards for local comprehensive community mental health centers.

165 (8) (a) "Mental illness" for purposes of this part only, means a severe psychiatric
166 disorder [~~as defined by the current edition of the Diagnostic and Statistical Manual of Mental~~
167 ~~Disorders published by the American Psychiatric Association]~~ which substantially impairs a
168 person's [~~mental, emotional, behavioral, or related functioning.~~] thought processes, sensory
169 input, or mood balance, causing delusions, hallucinations, threatening behavior or dangerous
170 paranoid ideations as defined by the current edition of the Diagnostic and Statistical Manual of
171 Mental Disorders published by the American Psychiatric Association, or which renders a
172 person unable to provide the basic necessities of life.

173 (b) "Mental illness" does not include the following conditions unless a severe
174 psychiatric condition exists independently of one of the following conditions, and is not
175 induced or caused by the following conditions:

176 (i) conditions which are primarily due to drug abuse or alcoholism;

177 (ii) other known neurological disorders such as epilepsy, multiple sclerosis, Parkinson's
178 disease, or Alzheimer's disease;

179 (iii) age-related impairments of the brain;

- 180 (iv) brain changes related to medical conditions or traumatic brain injury;
 181 (v) moderate, severe, and profound mental retardation as defined by the APA-DSM; or
 182 (vi) pervasive developmental disorders, including autistic disorder, Rett's disorder, and
 183 Asperger's disorder as defined by the APA-DSM.

184 (9) "Mental health facility" means the Utah State Hospital or other facility that
 185 provides mental health services under contract with the division, a local mental health
 186 authority, or organization that contracts with a local mental health authority.

187 (10) "Mental health officer" means an individual who is designated by a local mental
 188 health authority as qualified by training and experience in the recognition and identification of
 189 mental illness, to interact with and transport persons to any mental health facility.

190 (11) "Patient" means an individual [~~who has been temporarily placed in~~] under
 191 commitment to the custody or to the treatment services of a local mental health authority [~~or~~
 192 ~~who has been committed to a local mental health authority either voluntarily or by court order].~~

193 (12) "Substantial danger" means the person, by his or her behavior, due to mental
 194 illness:

195 (a) is at serious risk to commit suicide, inflict serious bodily harm on himself or
 196 herself, or because of his or her actions or inaction, to suffer serious physical harm; or

197 (b) is at serious risk to cause or attempt to cause harm to another, which may include:

198 (i) that he or she has inflicted or attempted to inflict bodily harm on another; or

199 (ii) that he or she has presented a danger to a person in his or her care § [;] . [~~or~~

200 ~~— (c) is incapable of providing the basic necessities of life, such as food, clothing, and~~
 201 ~~shelter, to a degree that physically harms their health or safety.] §~~

202 [(12)] (13) "Treatment" means psychotherapy, medication, including the administration
 203 of psychotropic medication, and other medical treatments that are generally accepted medical
 204 and psychosocial interventions for the purpose of restoring the patient to an optimal level of
 205 functioning in the least restrictive environment.

206 Section 3. Section **62A-15-631** is amended to read:

207 **62A-15-631. Involuntary commitment under court order -- Examination --**
 208 **Hearing -- Power of court -- Findings required -- Costs.**

209 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
 210 older may be commenced by filing a written application with the district court of the county in

211 which the proposed patient resides or is found, by a responsible person who has reason to know
212 of the condition or circumstances of the proposed patient which lead to the belief that the
213 individual is mentally ill and should be involuntarily committed. That application shall be
214 accompanied by:

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

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

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

227 (3) If the court finds from the application, from any other statements under oath, or
228 from any reports from a mental health professional that there is a reasonable basis to believe
229 that the proposed [~~patient's mental condition and immediate~~] patient has a mental illness which
230 poses a substantial danger, as defined in Section 62A-15-602, to himself, others, or property
231 [~~requires~~] requiring involuntary commitment pending examination and hearing; or, if the
232 proposed patient has refused to submit to an interview with a mental health professional as
233 directed by the court or to go to a treatment facility voluntarily, the court may issue an order,
234 directed to a mental health officer or peace officer, to immediately place the proposed patient in
235 the custody of a local mental health authority or in a temporary emergency facility as provided
236 in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the
237 issuance of the order for examination, a local mental health authority or its designee shall
238 report to the court, orally or in writing, whether the patient is, in the opinion of the examiners,
239 mentally ill, whether the patient has agreed to become a voluntary patient under Section
240 62A-15-625, and whether treatment programs are available and acceptable without court
241 proceedings. Based on that information, the court may, without taking any further action,

242 terminate the proceedings and dismiss the application. In any event, if the examiner reports
243 orally, he shall immediately send the report in writing to the clerk of the court.

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

251 (5) Notice of commencement of those proceedings shall be provided by the court as
252 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
253 legal counsel for the parties involved, and any other persons whom the proposed patient or the
254 court shall designate. That notice shall advise those persons that a hearing may be held within
255 the time provided by law. If the patient has refused to permit release of information necessary
256 for provisions of notice under this subsection, the extent of notice shall be determined by the
257 court.

258 (6) Proceedings for commitment of an individual under the age of 18 years to the
259 division may be commenced by filing a written application with the juvenile court in
260 accordance with the provisions of Part 7.

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

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

272 (b) The examiner shall inform the patient if not represented by an attorney that, if

273 desired, the patient does not have to say anything, the nature and reasons for the examination,
274 that it was ordered by the court, that any information volunteered could form part of the basis
275 for his or her involuntary commitment, and that findings resulting from the examination will be
276 made available to the court.

277 ~~(b)~~ (c) A time shall be set for a hearing to be held within ten ~~court~~ calendar days of
278 the appointment of the designated examiners, unless those examiners or a local mental health
279 authority or its designee informs the court prior to that hearing date that the patient is not
280 mentally ill, that he has agreed to become a voluntary patient under Section 62A-15-625, or
281 that treatment programs are available and acceptable without court proceedings, in which event
282 the court may, without taking any further action, terminate the proceedings and dismiss the
283 application.

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

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

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

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

301 (e) The court shall ~~receive~~ consider all relevant historical and material ~~evidence~~
302 information which is offered, subject to the rules of evidence, including reliable hearsay under
303 Rule 1102, Utah Rules of Evidence.

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

306 [(i)] (A) the detention order;

307 [(ii)] (B) admission notes;

308 [(iii)] (C) the diagnosis;

309 [(iv)] (D) any doctors' orders;

310 [(v)] (E) progress notes;

311 [(vi)] (F) nursing notes; and

312 [(vii)] (G) medication records pertaining to the current commitment.

313 (ii) That information shall also be supplied to the patient's counsel at the time of the
314 hearing, and at any time prior to the hearing upon request.

315 (10) The court shall order commitment of an individual who is 18 years of age or older
316 to a local mental health authority if, upon completion of the hearing and consideration of the
317 ~~[record]~~ information presented in accordance with Subsection (9)(e), the court finds by clear
318 and convincing evidence that:

319 (a) the proposed patient has a mental illness;

320 (b) because of the proposed patient's mental illness he poses ~~[an immediate]~~ a
321 substantial danger, as defined in Section 62A-15-602, of physical injury to others or himself,
322 which may include the inability to provide the basic necessities of life such as food, clothing,
323 and shelter, if allowed to remain at liberty;

324 (c) the patient lacks the ability to engage in a rational decision-making process
325 regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh
326 the possible ~~[costs and benefits of]~~ risks of accepting or rejecting treatment;

327 (d) there is no appropriate less-restrictive alternative to a court order of commitment;
328 and

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

332 (11) (a) The order of commitment shall designate the period for which the individual
333 shall be treated. When the individual is not under an order of commitment at the time of the
334 hearing, that period may not exceed six months without benefit of a review hearing. Upon

335 such a review hearing, to be commenced prior to the expiration of the previous order, an order
336 for commitment may be for an indeterminate period, if the court finds by clear and convincing
337 evidence that the required conditions in Subsection (10) will last for an indeterminate period.

338 (b) The court shall maintain a current list of all patients under its order of commitment.
339 That list shall be reviewed to determine those patients who have been under an order of
340 commitment for the designated period. At least two weeks prior to the expiration of the
341 designated period of any order of commitment still in effect, the court that entered the original
342 order shall inform the appropriate local mental health authority or its designee. The local
343 mental health authority or its designee shall immediately reexamine the reasons upon which the
344 order of commitment was based. If the local mental health authority or its designee determines
345 that the conditions justifying that commitment no longer exist, it shall discharge the patient
346 from involuntary commitment and immediately report that to the court. Otherwise, the court
347 shall immediately appoint two designated examiners and proceed under Subsections (8)
348 through (10).

349 (c) The local mental health authority or its designee responsible for the care of a patient
350 under an order of commitment for an indeterminate period, shall at six-month intervals
351 reexamine the reasons upon which the order of indeterminate commitment was based. If the
352 local mental health authority or its designee determines that the conditions justifying that
353 commitment no longer exist, that local mental health authority or its designee shall discharge
354 the patient from its custody and immediately report the discharge to the court. If the local
355 mental health authority or its designee determines that the conditions justifying that
356 commitment continue to exist, the local mental health authority or its designee shall send a
357 written report of those findings to the court. The patient and his counsel of record shall be
358 notified in writing that the involuntary commitment will be continued, the reasons for that
359 decision, and that the patient has the right to a review hearing by making a request to the court.
360 Upon receiving the request, the court shall immediately appoint two designated examiners and
361 proceed under Subsections (8) through (10).

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

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

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

375 Section 4. Section **62A-15-701** is amended to read:

376 **62A-15-701. Definitions.**

377 As used in this part:

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

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

381 (3) "Legal custody" means:

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

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

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

387 (4) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic
388 and Statistical Manual of Mental Disorders, that substantially impairs a person's mental,
389 emotional, behavioral, or related functioning to such an extent that he requires care and
390 treatment for his own welfare, the welfare of others, or the community.

391 [~~4~~] (5) "Physical custody" means:

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

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

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

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

397 [~~(5)~~] (6) "Residential" means any out-of-home placement made by a local mental
398 health authority, but does not include out-of-home respite care.

399 [~~(6)~~] (7) "Respite care" means temporary, periodic relief provided to parents or
400 guardians from the daily care of children with serious emotional disorders for the limited time
401 periods designated by the division.

402 Section 5. Section **62A-15-902** is amended to read:

403 **62A-15-902. Design and operation -- Security.**

404 (1) The forensic mental health facility shall be designed as a secure treatment facility.

405 The department shall have primary responsibility to design the treatment environment.

406 However, the department shall consult with the Department of Corrections on all matters that
407 affect the ability to secure the facility, its residents, and staff.

408 (2) (a) The forensic mental health facility shall be designed to separately accommodate
409 the following populations:

410 (i) prison inmates displaying mental illness[~~, as defined in Section 62A-15-602,~~]
411 necessitating treatment in a secure mental health facility;

412 (ii) criminally adjudicated persons found guilty and mentally ill or undergoing
413 evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of
414 Mentally Ill Persons;

415 (iii) criminally adjudicated persons found guilty and mentally ill under Title 77,
416 Chapter 16a, Commitment and Treatment of Mentally Ill Persons, who are also mentally
417 retarded;

418 (iv) persons found by a court to be incompetent to proceed in accordance with Title 77,
419 Chapter 15, Inquiry Into Sanity of Defendant, or not guilty by reason of insanity under Title 77,
420 Chapter 14, Defenses; and

421 (v) persons who are civilly committed to the custody of a local mental health authority
422 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health
423 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack
424 of necessary security, as determined by the superintendent or his designee.

425 (b) Placement of an offender in the forensic mental health facility under any category
426 described in Subsection (2)(a)(ii), (iii), or (iv) shall be made on the basis of the offender's status
427 as established by the court at the time of adjudication.

428 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
429 department shall make rules providing for the allocation of beds to the categories described in
430 Subsection (2)(a).

431 (3) The department shall:

432 (a) own and operate the forensic mental health facility;

433 (b) provide and supervise administrative and clinical staff; and

434 (c) provide security staff who are trained both as psychiatric technicians and certified
435 by the Department of Corrections to perform security responsibilities for the forensic mental
436 health facility.

437 (4) As used in this part, "mental illness" means a psychiatric disorder as defined by the
438 current Diagnostic and Statistical Manual of Mental Disorders, that substantially impairs a
439 person's mental, emotional, behavioral, or related functioning to such an extent that he requires
440 care and treatment for his own welfare, the welfare of others, or the community.

441 Section 6. Section **62A-15-1001** is amended to read:

442 **62A-15-1001. Definitions.**

443 As used in this part:

444 (1) "Attending physician" means a physician licensed to practice medicine in this state
445 who has primary responsibility for the care and treatment of the declarant.

446 (2) "Attorney-in-fact" means an adult properly appointed under this part to make
447 mental health treatment decisions for a declarant under a declaration for mental health
448 treatment.

449 (3) "Incapable" means that, in the opinion of the court in a guardianship proceeding
450 under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's
451 ability to receive and evaluate information effectively or communicate decisions is impaired to
452 such an extent that the person currently lacks the capacity to make mental health treatment
453 decisions.

454 (4) "Mental health facility" means the same as that term is defined in Section
455 62A-15-602.

456 (5) "Mental health treatment" means convulsive treatment, treatment with psychoactive
457 medication, or admission to and retention in a facility for a period not to exceed 17 days.

458 (6) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic

459 and Statistical Manual of Mental Disorders, that substantially impairs a person's mental,
460 emotional, behavioral, or related functioning to such an extent that he requires care and
461 treatment for his own welfare, the welfare of others, or the community.

462 Section 7. **Reporting requirements.**

463 On or before November 1, 2004, the division shall report to the Health and Human
464 Services Interim Committee an analysis of mental health commitments using the following
465 information:

466 (1) the total number of individuals committed under the definitions of mental illness
467 and substantial danger;

468 (2) the length of time between issuance of an order of detention and commitment
469 hearing, and the mental health facility or unit where the individual was placed during this time
470 period;

471 (3) the total cost of care given between detention of the individual and formal
472 commitment, or until the time the individual hold is dropped;

473 (4) for each individual committed, actual placement, including days in inpatient
474 settings before a community placement occurred;

475 (5) the duration for the commitment, including all recommitments;

476 (6) the length of time between termination of the commitment and recommitment, if it
477 occurs; and

478 (7) the number of people lost to followup and why.