

**SUSAN GALL INVOLUNTARY
COMMITMENT AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

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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 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

This act enacts uncodified material.

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

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

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

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director, and, with regard to its programs, under the policy direction of the board. The division is the

substance abuse authority and the mental health authority for this state.

(2) The division shall:

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

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

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

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

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

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

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

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

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

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

(ii) provide consultation and other assistance to public and private agencies and groups

working on substance abuse and mental health issues;

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

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

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

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

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

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

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

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

(x) contract with private and public entities for special statewide or nonclinical services according to board and division policy;

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

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

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

(C) appropriate expenditure of public funds;

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

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

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

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

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

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

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) (a) The division may accept in the name of and on behalf of the state donations, gifts,

devises, or bequests of real or personal property or services to be used as specified by the donor.

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

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

- (a) the use of public funds;
- (b) oversight responsibilities regarding public funds; and
- (c) governance of substance abuse and mental health programs and services.

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

62A-15-602. Definitions.

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

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

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

(3) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

(4) "Designee" means a physician who has responsibility for medical functions including

admission and discharge, an employee of a local mental health authority, or an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17A-3-606.

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

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

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

(8) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

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

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

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

(12) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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

(a) is at serious risk to:

(i) commit suicide.

(ii) inflict serious bodily injury on himself or herself; or

(iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter;

(b) is at serious risk to cause or attempt to cause serious bodily injury; or

(c) has inflicted or attempted to inflict serious bodily injury on another.

~~[(+2)]~~ (14) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

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

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

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

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

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

application is based.

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

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

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

order of detention shall be maintained at the place of detention.

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

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

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

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

(b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the basis for his or her involuntary commitment, and that findings resulting from the examination will be made available to the court.

~~(b)~~ (c) A time shall be set for a hearing to be held within ten ~~court~~ calendar days of the appointment of the designated examiners, unless those examiners or a local mental health

authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that he has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

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

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

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

(d) 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 mental health of the proposed patient.

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

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

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

[(ii)] (B) admission notes;

- [(iii)] (C) the diagnosis;
- [(iv)] (D) any doctors' orders;
- [(v)] (E) progress notes;
- [(vi)] (F) nursing notes; and
- [(vii)] (G) medication records pertaining to the current commitment.

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

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

- (a) the proposed patient has a mental illness;
- (b) because of the proposed patient's mental illness he poses ~~[an immediate]~~ a substantial danger, as defined in Section 62A-15-602, of physical injury to others or himself, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;
- (c) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible ~~[costs and benefits of]~~ risks of accepting or rejecting treatment;
- (d) there is no appropriate less-restrictive alternative to a court order of commitment; and
- (e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing

evidence that the required conditions in Subsection (10) will last for an indeterminate period.

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

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

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

(13) Any person committed as a result of an original hearing or a person's legally

designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

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

Section 4. Reporting requirements.

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

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

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

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

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

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

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

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