

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 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:



25 **62A-15-103. Division -- Creation -- Responsibilities.**

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

30 (2) The division shall:

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

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

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

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

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

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

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

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

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

55 (c) (i) consult and coordinate with local substance abuse authorities and local mental

- 56 health authorities regarding programs and services;
- 57 (ii) provide consultation and other assistance to public and private agencies and groups
- 58 working on substance abuse and mental health issues;
- 59 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
- 60 medical and social agencies, public health authorities, law enforcement agencies, education and
- 61 research organizations, and other related groups;
- 62 (iv) promote or conduct research on substance abuse and mental health issues, and
- 63 submit to the governor and the Legislature recommendations for changes in policy and
- 64 legislation;
- 65 (v) receive, distribute, and provide direction over public funds for substance abuse and
- 66 mental health services;
- 67 (vi) monitor and evaluate programs provided by local substance abuse authorities and
- 68 local mental health authorities;
- 69 (vii) examine expenditures of any local, state, and federal funds;
- 70 (viii) monitor the expenditure of public funds by:
- 71 (A) local substance abuse authorities;
- 72 (B) local mental health authorities; and
- 73 (C) in counties where they exist, the private contract provider that has an annual or
- 74 otherwise ongoing contract to provide comprehensive substance abuse or mental health
- 75 programs or services for the local substance abuse authority or local mental health authorities;
- 76 (ix) contract with local substance abuse authorities and local mental health authorities
- 77 to provide a comprehensive continuum of services in accordance with board and division
- 78 policy, contract provisions, and the local plan;
- 79 (x) contract with private and public entities for special statewide or nonclinical services
- 80 according to board and division policy;
- 81 (xi) review and approve each local substance abuse authority's plan and each local
- 82 mental health authority's plan in order to ensure:
- 83 (A) a statewide comprehensive continuum of substance abuse services;
- 84 (B) a statewide comprehensive continuum of mental health services; and
- 85 (C) appropriate expenditure of public funds;
- 86 (xii) review and make recommendations regarding each local substance abuse

87 authority's contract with its provider of substance abuse programs and services and each local
88 mental health authority's contract with its provider of mental health programs and services to
89 ensure compliance with state and federal law and policy;

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

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

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

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

103 (4) Before reissuing or renewing a contract with any local substance abuse authority or
104 local mental health authority, the division shall review and determine whether the local
105 substance abuse authority or local mental health authority is complying with its oversight and
106 management responsibilities described in Sections 17A-3-601, 17A-3-603.5, 17A-3-701 and
107 17A-3-703. Nothing in this Subsection (4) may be used as a defense to the responsibility and
108 liability described in Section 17A-3-603.5 and to the responsibility and liability described in
109 Section 17A-3-703.

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

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

117 (b) Those donations, gifts, devises, or bequests shall be used by the division in

118 performing its powers and duties. Any money so obtained shall be considered private
119 nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund
120 to be used by the division for substance abuse or mental health services. The state treasurer
121 may invest the fund and all interest shall remain with the fund.

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

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

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

129 **62A-15-602. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 (a) is at serious risk:

177 (i) to commit suicide;

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

179 (iii) suffer serious physical harm to a degree that physically harms their health or safety

180 because he or she, by his or her actions or inaction, is incapable of providing the basic
181 necessities of life, such as food, clothing, and shelter; or

182 (b) is at serious risk to cause or attempt to cause serious bodily injury to another, which
183 includes:

184 (i) that he or she has inflicted or attempted to inflict serious bodily injury on another; or
185 (ii) that he or she has presented a danger to a person in his or her care.

186 [~~12~~] (14) "Treatment" means psychotherapy, medication, including the administration
187 of psychotropic medication, and other medical treatments that are generally accepted medical
188 and psychosocial interventions for the purpose of restoring the patient to an optimal level of
189 functioning in the least restrictive environment.

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

191 **62A-15-631. Involuntary commitment under court order -- Examination --**
192 **Hearing -- Power of court -- Findings required -- Costs.**

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

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

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

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

211 (3) If the court finds from the application, from any other statements under oath, or
212 from any reports from a mental health professional that there is a reasonable basis to believe
213 that the proposed [~~patient's mental condition and immediate~~] patient has a mental illness which
214 poses a substantial danger, as defined in Section 62A-15-602, to himself, others, or property
215 [~~requires~~] requiring involuntary commitment pending examination and hearing; or, if the
216 proposed patient has refused to submit to an interview with a mental health professional as
217 directed by the court or to go to a treatment facility voluntarily, the court may issue an order,
218 directed to a mental health officer or peace officer, to immediately place the proposed patient in
219 the custody of a local mental health authority or in a temporary emergency facility as provided
220 in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the
221 issuance of the order for examination, a local mental health authority or its designee shall
222 report to the court, orally or in writing, whether the patient is, in the opinion of the examiners,
223 mentally ill, whether the patient has agreed to become a voluntary patient under Section
224 62A-15-625, and whether treatment programs are available and acceptable without court
225 proceedings. Based on that information, the court may, without taking any further action,
226 terminate the proceedings and dismiss the application. In any event, if the examiner reports
227 orally, he shall immediately send the report in writing to the clerk of the court.

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

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

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

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

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

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

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

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

273 was found.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

333 (c) The local mental health authority or its designee responsible for the care of a patient
334 under an order of commitment for an indeterminate period, shall at six-month intervals

335 reexamine the reasons upon which the order of indeterminate commitment was based. If the
336 local mental health authority or its designee determines that the conditions justifying that
337 commitment no longer exist, that local mental health authority or its designee shall discharge
338 the patient from its custody and immediately report the discharge to the court. If the local
339 mental health authority or its designee determines that the conditions justifying that
340 commitment continue to exist, the local mental health authority or its designee shall send a
341 written report of those findings to the court. The patient and his counsel of record shall be
342 notified in writing that the involuntary commitment will be continued, the reasons for that
343 decision, and that the patient has the right to a review hearing by making a request to the court.
344 Upon receiving the request, the court shall immediately appoint two designated examiners and
345 proceed under Subsections (8) through (10).

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

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

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

359 Section 4. **Reporting requirements.**

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

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

365 (2) the length of time between issuance of an order of detention and commitment

366 hearing, and the mental health facility or unit where the individual was placed during this time
367 period;

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

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

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

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

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