

COMMITMENT FOR MENTAL RETARDATION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Calvin G. Bird

LONG TITLE

General Description:

This bill affects admission to a mental retardation facility.

Highlighted Provisions:

This bill:

- ▶ repeals voluntary commitment of an adult with mental retardation to the Division of Services for People with Disabilities or a mental retardation facility or program;
- ▶ eliminates a discretionary delay of proceedings on a petition for reexamination of involuntary commitment;
- ▶ amends the duties of the Board of Services for People with Disabilities; and
- ▶ makes conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 62A-5-105**, as last amended by Chapter 246, Laws of Utah 2003
- 62A-5-301**, as last amended by Chapter 248, Laws of Utah 1996
- 62A-5-302**, as last amended by Chapter 132, Laws of Utah 1993
- 62A-5-309**, as last amended by Chapter 132, Laws of Utah 1993
- 62A-5-311**, as last amended by Chapter 132, Laws of Utah 1993
- 62A-5-312**, as last amended by Chapter 132, Laws of Utah 1993
- 62A-5-315**, as enacted by Chapter 1, Laws of Utah 1988

62A-5-317, as enacted by Chapter 1, Laws of Utah 1988

REPEALS:

62A-5-303, as last amended by Chapter 243, Laws of Utah 1996

62A-5-306, as last amended by Chapter 132, Laws of Utah 1993

62A-5-307, as last amended by Chapter 132, Laws of Utah 1993

62A-5-314, as last amended by Chapter 132, Laws of Utah 1993

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

Section 1. Section **62A-5-105** is amended to read:

62A-5-105. Board -- Membership -- Responsibilities -- Policy mediation.

(1) The board is the policymaking body for the division and shall establish by rule the policy of the division in accordance with:

- (a) the policy of the Legislature as set forth by this chapter; and
- (b) Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) The board shall:

(a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;

(b) establish policies for the assessment and collection of fees for programs within the division;

(c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement [~~such~~] the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 62A-5-109;

(d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;

(e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection

(2)(d);

(f) (i) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding; and

(ii) make periodic recommendations based on the review conducted under Subsection (2)(f)(i) to the Health and Human Services Interim Committee beginning at or before the September 2002 meeting of the committee;

(g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried out; and

(h) annually report to the executive director.

(3) At least one member of the board shall be a person whose life or family is directly affected by a disability, and at least one other board member shall be a person with a physical disability.

(4) The executive director shall mediate any differences which arise between the policies of the board and those of any other policy board in the department.

Section 2. Section **62A-5-301** is amended to read:

62A-5-301. Definitions.

As used in this part:

(1) "Designated mental retardation professional" means:

(a) a psychologist licensed under Title 58, Chapter 25a, who has either one year of specialized training in work with persons with mental retardation or one year of clinical experience with persons with mental retardation and who has been designated by the division as specially qualified, by training and experience, in the treatment of mental retardation; or

(b) a clinical or certified social worker licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who has two years of clinical experience with persons with mental retardation and who has been designated by the division as specially qualified, by training and experience, in the treatment of mental retardation.

(2) "Licensed physician" means an individual licensed to practice medicine under Section

58-67-301, Utah Medical Practice Act, Section 58-68-301, Utah Osteopathic Medical Practice Act, or a medical officer of the United States Government while in this state in the performance of official duties.

(3) "Mental retardation facility" means a residential facility for persons with mental retardation, that receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving the population of mentally retarded persons in this state.

(4) "Resident" means an individual under observation, care, or treatment in a mental retardation facility.

~~[(5) "Review committee" means a committee established under Section 62A-5-303 to review and approve or disapprove voluntary commitments to the division and admissions to mental retardation facilities in accordance with this part.]~~

Section 3. Section **62A-5-302** is amended to read:

62A-5-302. Division responsibility.

~~[(1)]~~ The division is responsible:

(1) for the supervision, care, and treatment of persons with mental retardation in this state who are committed to ~~[its]~~ the division's jurisdiction under the provisions of this part~~[-]; and~~

~~(2) [The division is also responsible] to evaluate and determine[-, after the voluntary commitment criteria described in Section 62A-5-303 have been found to exist,]~~ the most appropriate, least restrictive setting for a mentally retarded individual.

Section 4. Section **62A-5-309** is amended to read:

62A-5-309. Commitment -- Person 18 years or older.

Beginning July 1, 1993, the director or his designee may commit to the division an individual 18 years of age or older who has mental retardation, for observation, diagnosis, care, and treatment if that commitment is based on:

(1) involuntary commitment under the provisions of Section 62A-5-312; or

~~[(2) voluntary commitment under the provisions of Section 62A-5-307; or]~~

~~[(3)]~~ (2) temporary emergency commitment under the provisions of Section 62A-5-311.

Section 5. Section **62A-5-311** is amended to read:

62A-5-311. Temporary emergency commitment -- Observation and evaluation.

(1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to a mental retardation facility for observation and evaluation upon:

(a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:

(i) a belief that the individual has mental retardation and is likely to cause serious injury to self or others if not immediately committed;

(ii) personal knowledge of the individual's condition; and

(iii) the circumstances supporting that belief; or

(b) certification by a licensed physician or designated mental retardation professional stating that the physician or designated mental retardation professional:

(i) has examined the individual within a three-day period immediately preceding the certification; and

(ii) is of the opinion that the individual has mental retardation, and that because of the individual's mental retardation is likely to injure self or others if not immediately committed.

(2) If the individual in need of commitment is not placed in the custody of the director or his designee by the person submitting the application, the director or his designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.

(3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by Subsection (1)(b) and Subsection (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated mental retardation facility.

(4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.

(b) After proceedings for involuntary commitment have been commenced the individual shall be released unless [~~(i) the individual has made voluntary application for commitment in accordance with Section 62A-5-307; or (ii)~~] an order of detention is issued in accordance with Section 62A-5-312.

(5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Section 6. Section **62A-5-312** is amended to read:

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

(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has mental retardation, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:

(a) a certificate of a licensed physician or a designated mental retardation professional, stating that within a seven-day period immediately preceding the certification, the physician or designated mental retardation professional examined the individual and believes that the individual is mentally retarded and is in need of involuntary commitment; or

(b) a written statement by the petitioner stating that the individual was requested but refused to submit to an examination for mental retardation by a licensed physician or designated mental retardation professional, and that the individual refuses to voluntarily go to the division or a mental retardation facility recommended by the division for treatment. That statement shall be under oath and set forth the facts on which it is based.

(2) Before issuing a detention order, the court may require the petitioner to consult with

personnel at the division or at a mental retardation facility and may direct a designated mental retardation professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.

(3) The court may issue a detention order and may direct a peace officer to immediately take the individual to a mental retardation facility to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated mental retardation professionals that there is a reasonable basis to believe that the individual to be committed:

- (a) poses an immediate danger of physical injury to self or others;
- (b) requires involuntary commitment pending examination and hearing;
- (c) the individual was requested but refused to submit to an examination by a licensed physician or designated mental retardation professional; or
- (d) the individual refused to voluntarily go to the division or to a mental retardation facility recommended by the division.

(4) (a) If the court issues a detention order based on an application that did not include a certification by a designated mental retardation professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:

(i) whether the director or his designee believes that the individual is mentally retarded;
and

~~[(ii) whether the individual is capable of giving informed consent and has agreed to voluntary admission under Section 62A-5-307; and]~~

~~[(iii)]~~ (ii) whether appropriate treatment programs are available and ~~[acceptable]~~ will be used by the individual without court proceedings.

(b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

(5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.

(6) (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:

- (i) the individual to be committed;
- (ii) the applicant;
- (iii) any legal guardian of the individual;
- (iv) adult members of the individual's immediate family;
- (v) legal counsel of the individual to be committed, if any;
- (vi) the division; and
- (vii) any other person to whom the individual requests, or the court designates, notice to be given.

(b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.

(7) That notice shall:

- (a) set forth the allegations of the petition and all supporting facts;
- (b) be accompanied by a copy of any detention order issued under Subsection (3); and
- (c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.

(8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:

(a) there are no appropriate facilities for persons with mental retardation within the judicial district; and

(b) the transfer will not be adverse to the interests of the individual.

(9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order

or commitment under a detention order, the court shall appoint two designated mental retardation professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated mental retardation professionals. The examinations shall be conducted:

(i) separately;

(ii) at the home of the individual to be committed, a hospital, a facility for person's with mental retardation, or any other suitable place not likely to have a harmful effect on the individual; and

(iii) within a reasonable period of time after appointment of the examiners by the court.

(b) The court shall set a time for a hearing to be held within ~~[+0]~~ ten court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:

(i) the individual is not mentally retarded; or

~~[(ii) the individual has agreed to voluntary commitment under Section 62A-5-307; or]~~

~~[(iii)]~~ (ii) treatment programs are available and [acceptable] will be used by the individual without court proceedings.

(10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

(b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorneys' fees as determined by the court.

(11) The division or a designated mental retardation professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

(12) (a) The court shall provide an opportunity to the individual, the petitioner, and all

other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The court may, in its discretion:

(i) receive the testimony of any other person;

(ii) allow a waiver of the right to appear only for good cause shown;

(iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

(iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.

(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

(13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

(a) the individual to be committed is mentally retarded;

(b) because of the individual's mental retardation one or more of the following conditions exist:

(i) the individual poses an immediate danger of physical injury to self or others;

(ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the mental retardation facility recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

(14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.

(15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the facility for persons with mental retardation shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.

(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated mental retardation professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

(17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.

(c) The staff of the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of any discharge.

(d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the mental retardation facility does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.

(e) If the director of the division, or his designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Section 7. Section **62A-5-315** is amended to read:

62A-5-315. Petition for reexamination.

(1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.

(2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312. [~~If the petition is filed sooner than six months after the issuance of an order of indeterminate involuntary commitment, the court may delay commencing proceedings until that six-month period has ended, unless good cause for holding a hearing before the end of that six-month period exists.~~]

Section 8. Section **62A-5-317** is amended to read:

62A-5-317. Authority to transfer resident.

(1) The administrator of a mental retardation facility, or his designee, may transfer or authorize the transfer of a resident to another mental retardation facility if, before the transfer, the administrator conducts a careful evaluation of the resident and his treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred,

the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate [~~appointed under Section 62A-5-303~~] or, if none of those persons are known, to the resident's nearest known relative.

(2) If a resident, or his parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

Section 9. Repealer.

This bill repeals:

Section 62A-5-303, Admission committee -- Voluntary commitment.

Section 62A-5-306, Application -- Affidavit.

Section 62A-5-307, Voluntary commitment.

Section 62A-5-314, Release of person voluntarily committed -- Exceptions.