

**PUBLIC HEALTH AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: Peter C. Knudson

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**LONG TITLE**

**General Description:**

This bill amends the Health Code to clarify changes made to the Communicable Disease and Control Act during the 2006 General Session.

**Highlighted Provisions:**

This bill:

- ▶ allows a public health official to testify in court regarding an individual or group of individuals who are subject to an order of restriction; and
- ▶ allows the district court to balance an individual's personal belief regarding medical treatment and the ability of public health to control a public health threat.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-6-28**, as renumbered and amended by Chapter 201, Laws of Utah 1996

**26-6b-6**, as last amended by Chapter 185, Laws of Utah 2006

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

Section 1. Section **26-6-28** is amended to read:



28 **26-6-28. Protection from examination in legal proceedings -- Exceptions.**

29 ~~[No]~~ (1) Except as provided in Subsection (2), an officer or employee of the  
30 department or of a local health department may not be examined in a legal proceeding of any  
31 kind or character as to the existence or content of information retained pursuant to this chapter  
32 or obtained as a result of an investigation conducted pursuant to this chapter, without the  
33 written consent of the individual who is identified in the information or, if that individual is  
34 deceased, the consent of his next-of-kin.

35 (2) This section does not ~~[apply to]~~ restrict testimony and evidence provided by an  
36 employee or officer of the department or a local health department about:

37 (a) persons who are under restrictive actions taken by the department in accordance  
38 with Subsection 26-6-27(2)(e)~~[-];~~ or

39 (b) individuals or groups of individuals subject to examination, treatment, isolation,  
40 and quarantine actions under Chapter 6b, Communicable Diseases - Treatment, Isolation, and  
41 Quarantine Procedures.

42 Section 2. Section **26-6b-6** is amended to read:

43 **26-6b-6. Court determination for an order of restriction after examination**  
44 **period.**

45 (1) The district court shall set a hearing regarding the involuntary order of restriction of  
46 an individual or group of individuals, to be held within ten business days of the issuance of its  
47 examination order issued pursuant to Section 26-6b-5, unless the petitioner informs the district  
48 court prior to this hearing that the individual or group of individuals:

- 49 (a) are not subject to restriction; or
- 50 (b) have stipulated to the issuance of an order of restriction.

51 (2) (a) If the individual or group of individuals are not subject to restriction, the court  
52 may, without taking any further action, terminate the proceedings and dismiss the petition.

53 (b) If the individual or an individual in a group of individuals has stipulated to the  
54 issuance of an order of restriction, the court may issue an order as provided in Subsection (6)  
55 for those individuals without further hearing.

56 (3) (a) If the examination report required in Section 26-6b-5 proves the individual or  
57 group of individuals are not subject to restriction, the court may without further hearing  
58 terminate the proceedings and dismiss the petition.

59 (b) The court may, after a hearing at which the individual or group of individuals are  
60 present in person or by telephonic or other electronic means and have had the opportunity to be  
61 represented by counsel, extend its examination order for a reasonable period, not to exceed 90  
62 days, if the court has reason to believe the individual or group of individuals:

63 (i) are contaminated with a chemical or biological agent that is a threat to the public  
64 health; or

65 (ii) are in a condition, the exposure to which poses a threat to public health, but despite  
66 the exercise of reasonable diligence the diagnostic studies have not been completed.

67 (4) The petitioner shall, at the time of the hearing, provide the district court with the  
68 following items, to the extent that they have been issued or are otherwise available:

69 (a) the order of restriction issued by the petitioner;

70 (b) admission notes if any individual was hospitalized; and

71 (c) medical records pertaining to the current order of restriction.

72 (5) The information provided to the court under Subsection (4) shall also be provided  
73 to the individual's or group of individual's counsel at the time of the hearing, and at any time  
74 prior to the hearing upon request of counsel.

75 (6) (a) The district court shall order the individual and each individual in a group of  
76 individuals to submit to the order of restriction if, upon completion of the hearing and  
77 consideration of the record, it finds by clear and convincing evidence that:

78 (i) the individual or group of individuals are infected with a communicable disease, are  
79 contaminated with a chemical or biological agent, are in a condition, the exposure to which  
80 poses a threat to public health, or are in a condition which if treatment is not completed the  
81 individual or group of individuals will pose a threat to public health;

82 (ii) there is no appropriate and less restrictive alternative to a court order of  
83 examination, quarantine, isolation, and treatment, or any of them;

84 (iii) the petitioner can provide the individual or group of individuals with treatment  
85 that is adequate and appropriate to the individual's or group of individuals' conditions and  
86 needs; and

87 (iv) it is in the public interest to order the individual or group of individuals to submit  
88 to involuntary examination, quarantine, isolation, and treatment, or any of them[.] after  
89 weighing the following factors:

90           (A) the personal or religious beliefs, if any, of the individual that are opposed to  
91 medical examination or treatment;

92           (B) the ability of the department to control the public health threat with treatment  
93 alternatives that are requested by the individual;

94           (C) the economic impact for the department if the individual is permitted to use an  
95 alternative to the treatment recommended by the department; and

96           (D) other relevant factors as determined by the court.

97           (b) If upon completion of the hearing the court does not find all of the conditions listed  
98 in Subsection (6)(a) exist, the court shall immediately dismiss the petition.

99           (7) The order of restriction shall designate the period, subject to Subsection (8), for  
100 which the individual or group of individuals shall be examined, treated, isolated, or  
101 quarantined.

102           (8) (a) The order of restriction may not exceed six months without benefit of a district  
103 court review hearing.

104           (b) The district court review hearing shall be held prior to the expiration of the order of  
105 restriction issued under Subsection (7). At the review hearing the court may issue an order of  
106 restriction for up to an indeterminate period, if the district court enters a written finding in the  
107 record determining by clear and convincing evidence that the required conditions in Subsection  
108 (6) will continue for an indeterminate period.

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**Legislative Review Note**  
**as of 11-20-06 9:20 AM**

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-12-06 11:25 AM**

The Health and Human Services Interim Committee recommended this bill.

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**H.B. 57 - Public Health Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Any additional expenses incurred by individuals as a result of this legislation would be at their request.

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*12/19/2006, 3:28:11 PM, Lead Analyst: Greer, W.*

**Office of the Legislative Fiscal Analyst**