

**SUBSTANCE ABUSE TREATMENT FOR
PREGNANT MINORS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Human Services Code to provide voluntary and involuntary substance abuse treatment to pregnant minors who abuse alcohol or other drugs, and to provide education on the risks of alcohol or substance abuse during pregnancy.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Division of Substance Abuse and Mental Health, within the Department of Human Services, to provide substance abuse treatment, on a voluntary basis, for a pregnant minor who is a substance abuser;
- ▶ establishes procedures for a parent or guardian to consent to voluntary substance abuse treatment of a pregnant minor who is a substance abuser;
- ▶ establishes procedures, required findings, and the burden of proof required to subject a pregnant minor who is a substance abuser to involuntary substance abuse treatment;
- ▶ establishes procedures and standards for the release of a pregnant woman from voluntary or involuntary substance abuse treatment;
- ▶ provides for the detention of a pregnant minor who is a substance abuser, under certain circumstances;



- 28 ▶ describes the persons and entities responsible for payment for the treatment of a
- 29 pregnant minor under this bill; and
- 30 ▶ provides for the creation and distribution of educational material relating to the risks
- 31 of drug, alcohol, and tobacco use during pregnancy.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 ENACTS:

- 38 **62A-16-101**, Utah Code Annotated 1953
- 39 **62A-16-102**, Utah Code Annotated 1953
- 40 **62A-16-103**, Utah Code Annotated 1953
- 41 **62A-16-201**, Utah Code Annotated 1953
- 42 **62A-16-202**, Utah Code Annotated 1953
- 43 **62A-16-301**, Utah Code Annotated 1953
- 44 **62A-16-302**, Utah Code Annotated 1953
- 45 **62A-16-303**, Utah Code Annotated 1953
- 46 **62A-16-304**, Utah Code Annotated 1953
- 47 **62A-16-305**, Utah Code Annotated 1953
- 48 **62A-16-306**, Utah Code Annotated 1953
- 49 **62A-16-401**, Utah Code Annotated 1953
- 50 **62A-16-501**, Utah Code Annotated 1953
- 51 **62A-16-601**, Utah Code Annotated 1953



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

54 Section 1. Section **62A-16-101** is enacted to read:

55 **CHAPTER 16. SUBSTANCE ABUSE TREATMENT FOR PREGNANT MINORS**

56 **Part 1. General Provisions**

57 **62A-16-101. Title.**

58 This chapter is known as "Substance Abuse Treatment for Pregnant Minors."

59 Section 2. Section **62A-16-102** is enacted to read:

60 **62A-16-102. Definitions.**

61 As used in this chapter:

62 (1) "Designated substance abuse examiner" means:

63 (a) a licensed physician familiar with substance abuse and dependency, designated by
64 the division as specially qualified by training or experience in the diagnosis of substance abuse
65 and dependency; or

66 (b) another licensed professional designated by the division as specially qualified by
67 training and at least five years continual experience in the identification or treatment of
68 substance abuse and dependency.

69 (2) "Inpatient substance abuse treatment" means a program provided by the division, or
70 under contract with the division, that includes:

71 (a) for a person who is a substance abuser as it relates to alcohol, an inpatient treatment
72 program for alcohol abuse at a secure treatment facility; or

73 (b) for a person who is a substance abuser as it relates to a drug other than alcohol, an
74 inpatient treatment program for substance abuse at a secure treatment facility that includes
75 regular drug testing.

76 (3) "Inpatient treatment facility" means a facility where inpatient substance abuse
77 treatment is provided.

78 (4) "Outpatient substance abuse treatment" means a program provided by the division,
79 or under contract with the division, that includes:

80 (a) for a person who is a substance abuser as it relates to alcohol, an outpatient
81 treatment program for alcohol abuse; or

82 (b) for a person who is a substance abuser as it relates to a drug other than alcohol, an
83 outpatient treatment program for substance abuse that includes regular drug testing.

84 (5) "Qualifying minor" means a minor who:

85 (a) is currently pregnant; or

86 (b) was pregnant at the time that:

87 (i) the petition described in Subsection 62A-16-302(1) was filed; or

88 (ii) consent to voluntary substance abuse treatment of the pregnant minor was obtained
89 under Section 62A-16-201.

- 90 (6) "Substance abuse treatment" means:
- 91 (a) inpatient substance abuse treatment; or
- 92 (b) outpatient substance abuse treatment.
- 93 (7) "Substance abuser" means that:
- 94 (a) a qualifying minor is an abuser of alcohol or another drug known to cause physical
- 95 harm to:
- 96 (i) a minor; or
- 97 (ii) an unborn child when used by a minor during the time that the minor is pregnant;
- 98 and
- 99 (b) there is a substantial risk that the continued abuse of alcohol or drugs by the
- 100 qualifying minor will seriously endanger the physical health of the minor or the minor's unborn
- 101 child.

Section 3. Section **62A-16-103** is enacted to read:

62A-16-103. Applicability of chapter to persons aged 18 years or older.

Notwithstanding any other provision of this chapter, when a person who is a qualifying minor, and who is subject to any of the provisions of this chapter, becomes 18 years old:

- 106 (1) the court shall dismiss any petition filed under this chapter that relates to that
- 107 person;
- 108 (2) any order issued under this chapter that relates to that person shall cease to be in
- 109 effect; and
- 110 (3) the division shall immediately release that person from any form of substance abuse
- 111 treatment, unless:
- 112 (a) the person consents, in writing, to continue the substance abuse treatment on a
- 113 voluntary basis; and
- 114 (b) the division agrees, in writing, to allow the person to continue the substance abuse
- 115 treatment.

Section 4. Section **62A-16-201** is enacted to read:

Part 2. Voluntary treatment

62A-16-201. Duty to provide substance abuse treatment to a qualifying minor --
Voluntary substance abuse treatment.

- 120 (1) The division shall provide substance abuse treatment to a qualifying minor who is a

121 substance abuser:

122 (a) on a voluntary basis, in accordance with Subsections (2) and (3); or

123 (b) as ordered by a court under Section 62A-16-304 or 62A-16-305.

124 (2) In order to receive substance abuse treatment on a voluntary basis, a parent or legal

125 guardian of the qualifying minor shall:

126 (a) consent, in writing, to the type of substance abuse treatment offered by the division
127 for the qualifying minor; and

128 (b) sign a release authorizing disclosure to the division of all information related to the
129 substance abuse treatment of the qualifying minor, including the results of drug tests.

130 (3) Treatment of a qualifying minor is considered to be on a voluntary basis if consent
131 is given by a parent or guardian of the qualifying minor.

132 Section 5. Section **62A-16-202** is enacted to read:

133 **62A-16-202. Release from voluntary inpatient substance abuse treatment.**

134 (1) A qualifying minor whose parent or guardian consents to voluntary inpatient
135 substance abuse treatment of the minor under Section 62A-16-201, shall be released upon
136 written request of a parent or guardian of the minor, unless the division, or the division's
137 designee:

138 (a) determines, consistent with Section 62A-16-301, that the minor is in need of
139 involuntary substance abuse treatment; and

140 (b) files a petition for involuntary substance abuse treatment of the qualifying minor
141 within two days, excluding weekends and holidays, after the day on which the written request
142 for release is made.

143 (2) If a request for release is denied under Subsection (1), the division or the division's
144 designee shall, within 24 hours after the request for release is made, provide written notice of
145 the refusal, including the reason for the refusal, to the minor and the person who requested the
146 minor's release.

147 Section 6. Section **62A-16-301** is enacted to read:

148 **Part 3. Involuntary treatment**

149 **62A-16-301. Required findings for involuntary substance abuse treatment.**

150 A minor is in need of involuntary substance abuse treatment under this chapter if:

151 (1) the minor is a qualifying minor;

152 (2) the minor is a substance abuser;
153 (3) the minor's participation in substance abuse treatment is necessary to protect the
154 physical health of the minor, or the minor's unborn child, from serious endangerment; and
155 (4) (a) the division has offered substance abuse treatment for the minor under Section
156 62A-16-201; and
157 (b) (i) a parent or legal guardian of the minor refuses to:
158 (A) consent, in writing, to the type of substance abuse treatment offered by the division
159 for the minor; or
160 (B) sign the release described in Subsection 62A-16-201(2)(a) or (b); or
161 (ii) a parent or guardian of the minor removes, or requests removal, of the minor from
162 substance abuse treatment after the parent or guardian:
163 (A) consents, in writing, to the type of substance abuse treatment offered by the
164 division for the minor; and
165 (B) signs the release described in Subsection 62A-16-201(2)(a) or (b).
166 Section 7. Section **62A-16-302** is enacted to read:
167 **62A-16-302. Petition for involuntary substance abuse treatment -- Detention**
168 **order.**
169 (1) The division shall file a petition for involuntary substance abuse treatment of a
170 qualifying minor who the division determines, consistent with Section 62A-16-301, is in need
171 of substance abuse treatment.
172 (2) The petition described in Subsection (1) shall:
173 (a) be accompanied by:
174 (i) a certificate of a licensed physician or a designated substance abuse examiner
175 stating that, within the seven-day period immediately preceding the day on which the petition is
176 filed, the physician or designated substance abuse examiner examined the minor and is of the
177 opinion that the minor is a substance abuser; or
178 (ii) a written statement indicating that:
179 (A) the division has requested that a parent or guardian of the minor consent to a
180 substance abuse examination of the minor by a designated substance abuse examiner; and
181 (B) the parent or guardian refused to consent to the examination of the minor;
182 (b) be sworn to under oath; and

183 (c) state the facts upon which the petition is based.

184 (3) The court may issue a detention order, directing a peace officer to immediately
185 place the minor in an inpatient treatment facility, if, based on the petition, the certificate
186 described in Subsection (2)(a), and any other statements made under oath, the court finds that
187 there is reasonable cause to believe:

188 (a) that the minor is a qualifying minor; and

189 (b) consistent with Section 62A-16-301, that the minor is in need of substance abuse
190 treatment.

191 (4) Except as provided in Subsection (5)(a), the court shall provide notice of the
192 commencement of proceedings for involuntary substance abuse treatment of a qualifying
193 minor, including the allegations of the petition, any reported facts, a copy of any official order
194 of detention, and a notice of hearing to:

195 (a) in accordance with Subsection (5)(b), the qualifying minor and a parent or guardian
196 of the qualifying minor; and

197 (b) as soon as practicable:

198 (i) the division;

199 (ii) legal counsel for the parties involved; and

200 (iii) any other person whom the court shall designate.

201 (5) (a) If a parent or guardian of the qualifying minor refuses to permit release of
202 information necessary to fully comply with the notice provisions under Subsection (4), the
203 extent of notice shall be determined by the court.

204 (b) (i) If, at the time of the filing of the petition described in this section, the qualifying
205 minor is not in an inpatient substance abuse treatment facility, the notice and information
206 described in Subsection (4) shall be provided to the qualifying minor, and a parent or guardian
207 of the qualifying minor, at or before the time the qualifying minor is placed in a substance
208 abuse treatment facility.

209 (ii) If, at the time of the filing of the petition described in this section, the qualifying
210 minor is in an inpatient substance abuse treatment facility, the notice and information described
211 in Subsection (4) shall be provided to the qualifying minor, and a parent or guardian of the
212 qualifying minor, within one day, excluding weekends and holidays, after the day on which the
213 proceedings are commenced.

214 (6) A copy of the order to detain a qualifying minor shall be maintained at the place of
215 detention.

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

219 Section 8. Section **62A-16-303** is enacted to read:

220 **62A-16-303. Court-ordered designated examinations.**

221 (1) (a) Within one day, excluding weekends and holidays, after the day on which
222 proceedings are commenced for the involuntary substance abuse treatment of a qualifying
223 minor, the court shall appoint two designated substance abuse examiners to examine the minor.

224 (b) If requested by a parent or guardian of the minor, the court shall appoint, as one of
225 the designated substance abuse examiners, a reasonably available qualified person designated
226 by the parent or guardian.

227 (c) The examinations described in this Subsection (1):

228 (i) shall be conducted separately; and

229 (ii) may be conducted at:

230 (A) the home of the minor;

231 (B) a hospital or other medical facility; or

232 (C) any other suitable place.

233 (2) If the minor is not represented by an attorney, the designated substance abuse
234 examiner shall inform the minor:

235 (a) that she does not have to say anything;

236 (b) of the nature and reasons for the examination;

237 (c) that the examination was ordered by the court;

238 (d) that any information volunteered could form part of the basis for an order for
239 involuntary substance abuse treatment; and

240 (e) that the findings resulting from the examination will be made available to the court.

241 (3) (a) At least one designated examiner appointed by the court shall be a licensed
242 physician.

243 (b) The person who signed the certification described in Subsection

244 62A-16-302(2)(a)(i) may not be appointed as a designated examiner in the same case.

245 Section 9. Section **62A-16-304** is enacted to read:

246 **62A-16-304. Hearing on petition for involuntary substance abuse treatment --**

247 **Order.**

248 (1) If a petition is filed under Subsection 62A-16-302, the court shall hold a hearing on
249 the petition within three days, excluding holidays, after the day on which the petition is filed.

250 (2) The court shall appoint an attorney to represent a minor if:

251 (a) the court finds that a parent or guardian of the minor is impecunious; and

252 (b) the parent or guardian desires to have an attorney appointed.

253 (3) The court shall provide an opportunity to appear at the hearing, to testify, and to
254 present and cross-examine witnesses to:

255 (a) the minor;

256 (b) each parent or guardian of the minor;

257 (c) the division; and

258 (d) all other persons to whom notice is required to be given.

259 (4) The court may:

260 (a) receive the testimony of any other person not described in Subsection (3);

261 (b) allow a waiver of the minor's right to appear, only if good cause for the waiver is
262 established and included in the court record;

263 (c) exclude all persons from the hearing who are not necessary for the conduct of the
264 proceedings; and

265 (d) upon motion of counsel, require that the testimony of each designated substance
266 abuse examiner be given out of the presence of any other substance abuse examiner.

267 (5) At the conclusion of the hearing described in this section, the court shall:

268 (a) immediately make oral findings regarding whether the petitioner has proven, by
269 clear and convincing evidence, that the minor:

270 (i) is a qualifying minor; and

271 (ii) is in need of involuntary substance abuse treatment, as described in Section
272 62A-16-301; and

273 (b) if the court finds that the petitioner has proven the elements described in Subsection
274 (5)(a), by clear and convincing evidence, the court shall:

275 (i) order that the qualifying minor view the informational video, described in Section

276 62A-16-601, at a location specified by the division;

277 (ii) consistent with the least restrictive means necessary to protect the minor or the
278 minor's unborn child from serious endangerment of physical harm, order that the minor
279 participate in outpatient substance abuse treatment or inpatient substance abuse treatment for
280 not less than 30 days nor more than 90 days;

281 (iii) specify whether the substance abuse treatment ordered under this section shall be
282 for alcohol abuse, abuse of a drug other than alcohol, or both; and

283 (iv) if the minor's substance abuse relates to a drug other than alcohol, order that the
284 minor is subject to regular substance abuse tests.

285 (6) Within 2 days, excluding weekends and holidays, after the day on which the
286 hearing described in this section is held, the court shall issue written findings that reflect the
287 findings made under Subsection (5).

288 (7) The court shall consider recommendations of the division in determining the type
289 and length of substance abuse treatment that the court orders.

290 (8) All records relating to the involuntary substance abuse treatment of a qualifying
291 minor shall be provided to the division.

292 Section 10. Section **62A-16-305** is enacted to read:

293 **62A-16-305. Petition for modification or extension of order for involuntary**
294 **substance abuse treatment.**

295 (1) The division may file a petition to modify or extend an order for involuntary
296 substance abuse treatment if:

297 (a) the minor, or a parent or guardian of the minor, fails to comply with a court order
298 under this chapter;

299 (b) the minor:

300 (i) consumes alcohol;

301 (ii) uses another drug known to cause physical harm to a minor or to an unborn child
302 when used by a pregnant minor; or

303 (iii) fails a substance abuse test; or

304 (c) during the course of the substance abuse treatment of the minor, the division
305 determines, in accordance with Section 62A-16-301, that the minor is in need of substance
306 abuse treatment beyond the time period ordered by the court.

307 (2) If a petition is filed under Subsection (1), the court shall hold a hearing on the
308 petition within three days, excluding holidays, after the day on which the petition is filed.

309 (3) The court shall appoint an attorney to represent the minor if:

310 (a) the court finds that a parent or guardian of the minor is impecunious; and

311 (b) the parent or guardian of the minor desires to have an attorney appointed.

312 (4) The requirements relating to the hearing described in Section 62A-16-304 apply to
313 a hearing under this section.

314 (5) At the conclusion of the hearing described in Subsection (2), the court may modify
315 or extend an order for involuntary substance abuse treatment if the court finds, by clear and
316 convincing evidence, that:

317 (a) the minor, or a parent or guardian of the minor, failed to comply with a court order
318 under this chapter;

319 (b) the minor:

320 (i) consumed alcohol;

321 (ii) used another drug known to cause physical harm to a minor or to an unborn child
322 when used by a pregnant minor; or

323 (iii) failed a substance abuse test;

324 (c) the minor is a substance abuser; and

325 (d) a modification or extension of the order is necessary to protect the minor, or the
326 minor's unborn child, from serious endangerment of the minor's or the unborn child's physical
327 health.

328 (6) At the conclusion of the hearing described in Subsection (2), the court shall
329 immediately make oral findings regarding whether the petitioner has proven the required
330 elements described in Subsection (5) by clear and convincing evidence.

331 (7) If the court finds that the petitioner has proven the required elements described in
332 Subsection (5) by clear and convincing evidence, the court may, consistent with the least
333 restrictive means necessary to protect the minor or the minor's unborn child from serious
334 endangerment of physical harm:

335 (a) modify the order to:

336 (i) provide for a different or more restrictive type of substance abuse treatment; or

337 (ii) order that the minor is subject to regular substance abuse tests; or

338 (b) subject to Subsection (8), extend the period of substance abuse treatment provided
339 for in the order.

340 (8) (a) A person may not be subjected to involuntary substance abuse treatment under
341 this chapter for an aggregate period of more than 270 days.

342 (b) The aggregate period described in Subsection (8)(a) relates to a single pregnancy
343 and shall not prohibit a new period of involuntary substance abuse treatment related to a
344 subsequent pregnancy.

345 (9) Within two days, excluding weekends and holidays, after the day on which the
346 hearing described in Subsection (2) is held, the court shall issue written findings that reflect the
347 findings made under Subsection (5).

348 (10) The court shall consider recommendations of the division in determining the type
349 of modification, or the length of extension, of the order.

350 Section 11. Section **62A-16-306** is enacted to read:

351 **62A-16-306. Release from involuntary substance abuse treatment.**

352 (1) The division or the division's designee shall evaluate a minor who is subject to an
353 order under this chapter at least every 30 days to determine whether:

354 (a) the minor continues to meet the criteria for involuntary substance abuse treatment
355 under this chapter; and

356 (b) a less restrictive means of substance abuse treatment is sufficient and appropriate to
357 protect the minor or the minor's unborn child from serious endangerment of physical harm.

358 (2) (a) The division shall release from commitment any person who, in the opinion of
359 the division or the division's designee, no longer meets the criteria for involuntary substance
360 abuse treatment under this chapter.

361 (b) If the division determines, under Subsection (1)(b), that a less restrictive means of
362 substance abuse treatment is sufficient and appropriate to protect the minor or the minor's
363 unborn child from serious endangerment of physical harm, the division shall provide substance
364 abuse treatment by the least restrictive means that is sufficient and appropriate.

365 (3) Within the limits of the court order, including limits related to the expiration and
366 scope of the order, the division may increase the restrictiveness of substance abuse treatment
367 that is reduced under Subsection (2)(b), if the division determines that the reduced
368 restrictiveness is no longer sufficient or appropriate to protect the minor or the minor's unborn

369 child from serious endangerment of physical harm.

370 (4) Upon release of a minor from involuntary substance abuse treatment under this
371 chapter, the division shall make an effort to ensure that any further supportive services required
372 to meet the minor's needs upon release will be provided.

373 Section 12. Section **62A-16-401** is enacted to read:

374 **Part 4. Custody**

375 **62A-16-401. Authority of peace officer to take a minor who is a substance abuser**
376 **into custody.**

377 A peace officer may take a qualifying minor who is a substance abuser into custody and
378 deliver her to an inpatient treatment facility designated by the division if:

379 (1) a parent or guardian of the minor consents to treatment of the minor;

380 (2) a court issues a detention order under Subsection 62A-16-302(3);

381 (3) a court issues an order under Section 62A-16-304 or 62A-16-305, requiring the
382 minor to participate in inpatient substance abuse treatment; or

383 (4) a minor who is subject to an order described in Subsection (3):

384 (a) leaves an inpatient substance abuse treatment center without permission of the
385 court, the division, or the division's designee; or

386 (b) (i) is released from inpatient substance abuse treatment by the division or the
387 division's designee under Section 62A-16-306;

388 (ii) after being released, the division determines, under Subsection 62A-16-306(3), that
389 the minor should be returned to inpatient treatment; and

390 (iii) a court order requiring the minor to participate in inpatient substance abuse
391 treatment is still in effect.

392 Section 13. Section **62A-16-501** is enacted to read:

393 **Part 5. Payment of Costs**

394 **62A-16-501. Payment of costs.**

395 (1) All costs incurred to treat a pregnant minor under this chapter shall be assessed to
396 and paid by the minor's parents, according to their ability to pay.

397 (2) The Division of Child and Family Services or the Division of Juvenile Justice
398 Services shall be financially responsible, in addition to the minor's parents, if the minor is in
399 the legal custody of either of those divisions at the time the minor begins treatment under this

400 chapter, unless Medicaid regulation or contract provisions specify otherwise.

401 (3) The Office of Recovery Services shall assist the divisions described in Subsection
402 (2) in collecting the costs assessed pursuant to this section.

403 Section 14. Section **62A-16-601** is enacted to read:

404 **Part 6. Education and Public Outreach**

405 **62A-16-601. Education on risks of drug, alcohol, and tobacco use during**
406 **pregnancy.**

407 (1) The Department of Health shall publish printed materials and produce an
408 informational video regarding:

409 (a) the risks of drug, alcohol, and tobacco use by a woman during pregnancy; and

410 (b) treatment that is available to a qualifying minor who is a substance abuser.

411 (2) (a) The Department of Health and each local health department shall provide a copy
412 of the printed materials and a viewing of the informational video, described in Subsection (1),
413 to any person free of charge.

414 (b) The Department of Health shall provide copies of the materials and video described
415 in Subsection (1) to the Department of Human Services for free distribution of the printed
416 materials to, and free viewing of the informational video by, the public.

417 (3) The Department of Health and the Department of Human Services shall make
418 copies of the materials and video, described in Subsection (1), available on the departments'
419 websites for viewing by physicians and the public.

420 (4) The Department of Health shall inform physicians who provide care to pregnant
421 minors, in the manner that the department determines to be most appropriate, of the availability
422 of the materials and video described in Subsection (1).

Legislative Review Note
as of 12-27-07 3:05 PM

Office of Legislative Research and General Counsel