

Representative Derek E. Brown proposes the following substitute bill:

INVOLUNTARY FEEDING AND HYDRATION OF INMATES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure by authorizing correctional facilities to involuntarily feed and hydrate prisoners who refuse sustenance and to petition the court to order involuntarily feeding or hydrating of prisoners if required for more than three consecutive days.

Highlighted Provisions:

This bill:

- ▶ provides that a correctional facility may administer food or fluids to a prisoner by involuntary means for up to three consecutive days if a panel, consisting of the correctional facility administrator, a licensed physician, and a mental health therapist determine that the administration is reasonably necessary because the prisoner is in imminent danger due to inadequate nutrition or hydration;
- ▶ authorizes the correctional facility administrator to petition the court for an order to administer food or fluids to a prisoner by involuntary means if required for more than three consecutive days;
- ▶ provides that the court shall hold a hearing within three business days of receiving a petition from a correctional facility administrator to administer food or fluids to a prisoner by involuntary means;



- 26 ▶ provides that the prisoner has the right to attend the hearing, testify before the court,
- 27 present evidence, and cross-examine witnesses;
- 28 ▶ requires that any involuntary feeding or hydration by the correctional facility be
- 29 conducted under medical supervision and in a reasonable manner; and
- 30 ▶ provides exceptions to the provisions of this bill for medically imposed fasts or
- 31 religious fasts of reasonable duration.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 ENACTS:

- 38 **77-16b-101**, Utah Code Annotated 1953
- 39 **77-16b-102**, Utah Code Annotated 1953
- 40 **77-16b-103**, Utah Code Annotated 1953
- 41 **77-16b-104**, Utah Code Annotated 1953
- 42 **77-16b-105**, Utah Code Annotated 1953
- 43 **77-16b-106**, Utah Code Annotated 1953



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

46 Section 1. Section **77-16b-101** is enacted to read:

47 **CHAPTER 16b. INVOLUNTARY FEEDING AND HYDRATION OF INMATES**

48 **77-16b-101. Title.**

49 This chapter is known as the "Involuntary Feeding and Hydration of Inmates."

50 Section 2. Section **77-16b-102** is enacted to read:

51 **77-16b-102. Definitions.**

52 As used in this chapter:

53 (1) "Correctional facility" means a county jail or secure correctional facility as defined
54 by Section 64-13-1.

55 (2) "Correctional facility administrator" means a county sheriff in charge of a county
56 jail or a designee of the executive director of the Utah Department of Corrections.

57 (3) "Medical supervision" means under the direction of a licensed physician, physician
58 assistant, or nurse practitioner.

59 (4) "Mental health therapist" has the same definition as in Section 58-60-102.

60 (5) "Prisoner" means any person who is a pretrial detainee or has been committed to
61 the custody of a sheriff or the Utah Department of Corrections, and who is physically housed in
62 a correctional facility.

63 Section 3. Section **77-16b-103** is enacted to read:

64 **77-16b-103. Involuntary feeding or hydration of prisoners -- Emergency**
65 **procedures.**

66 (1) If a licensed physician, physician assistant, or nurse practitioner determines at any
67 time that a prisoner is in imminent danger of death because of inadequate nutrition or
68 hydration, a panel consisting of the following members shall review the prisoner's status:

69 (a) the correctional facility administrator;

70 (b) a licensed physician; and

71 (c) a mental health therapist who has been appointed by the correctional facility
72 administrator.

73 (2) If reasonably necessary and not contrary to a court order, the panel may authorize,
74 by a majority vote, the involuntary feeding or hydration of a prisoner:

75 (a) for up to three successive days;

76 (b) under immediate medical supervision; and

77 (c) in a medically recognized and acceptable manner.

78 (3) Involuntary feeding or hydration for more than three successive days requires an
79 order issued by the district court under this chapter.

80 Section 4. Section **77-16b-104** is enacted to read:

81 **77-16b-104. Involuntary feeding or hydration of prisoners -- Petition procedures,**
82 **venue -- Prisoner rights.**

83 (1) A correctional facility administrator may petition the district court where the
84 correctional facility is located for an order permitting the involuntary feeding or hydration of
85 any prisoner who is likely to suffer severe harm or death by refusing to accept sufficient
86 nutrition or hydration.

87 (2) Prior to the filing of a petition under this section, a mental health therapist who is

88 designated by the correctional facility administrator shall conduct a mental health evaluation of
89 the subject prisoner ~~H→ [:] , and shall explain what efforts have been made to address the~~
89a **findings of the evaluation including provision of medication or other treatment.** ←H

90 (3) Upon the filing of a petition, the district court shall hold a hearing within three
91 working days. The court:

92 (a) shall confidentially review the prisoner's medical and mental health records as they
93 are available ~~H→ , including the evaluation referenced in this section~~ ←H :

94 (b) may hear testimony or receive evidence, subject to the Utah Rules of Evidence,
95 concerning the circumstances of the prisoner's lack of nutrition or hydration; and

96 (c) may exclude from the hearing any person whose presence is not necessary for the
97 purposes of the hearing, due to the introduction of personal medical and mental health
98 evidence.

99 (4) After conducting the hearing under Subsection (3), the district court shall issue an
100 order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of
101 evidence that:

102 (a) (i) the prisoner is likely to suffer severe harm or death by refusing to accept
103 sufficient nutrition or hydration; and

104 (ii) the correctional facility's medical or penological objectives are valid and outweigh
105 the prisoner's right to refuse treatment; or

106 (b) the prisoner is refusing sufficient nutrition or hydration with the intent to obstruct
107 or delay any judicial or administrative proceeding pending against the prisoner.

108 (5) The district court shall state its findings of fact and conclusions of law on the
109 record.

110 (6) The correctional facility administrator shall serve copies of the petition and a notice
111 of the district court hearing on the prisoner and the prisoner's counsel, if the prisoner is
112 represented by counsel, at least 48 hours in advance of the hearing under Subsection (3).

113 (7) The prisoner has the right to attend the hearing, testify, present evidence, and
114 cross-examine witnesses.

115 Section 5. Section **77-16b-105** is enacted to read:

116 **77-16b-105. Involuntary feeding or hydration of prisoners -- Standards,**
117 **continuing jurisdiction, and records.**

118 (1) Any involuntary nutrition or hydration of a prisoner pursuant to this chapter shall

119 be conducted under immediate medical supervision and in a medically recognized and
120 acceptable manner.

121 (2) Upon the filing of a petition pursuant to Section 77-16b-102, the court has the
122 continuing jurisdiction to review the prisoner's need for involuntary nutrition or hydration as
123 long as the prisoner remains in custody of the correctional facility.

124 (3) A correctional facility shall maintain records of any involuntary feeding or
125 hydration of prisoners under this chapter.

126 (a) The records are classified as "controlled" under Section 63G-2-304 of the
127 Governmental Records Access and Management Act.

128 (b) All medical or mental health records submitted to the court under this chapter shall
129 be kept under seal.

130 Section 6. Section **77-16b-106** is enacted to read:

131 **77-16b-106. Involuntary feeding or hydration of prisoners -- Exceptions.**

132 This chapter does not apply to medically imposed fasts for the purpose of conducting
133 medical procedures or tests, or to religious fasts of reasonable duration.