

1 **INVOLUNTARY FEEDING AND HYDRATION OF INMATES**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Derek E. Brown**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Code of Criminal Procedure by authorizing county jails to
10 involuntarily feed and hydrate prisoners who refuse sustenance and to petition the court
11 to involuntarily feed or hydrate prisoners if required for more than three consecutive
12 days.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ provides that a county jail may administer food or fluids to a prisoner by involuntary
16 means for up to three consecutive days if a panel, consisting of the sheriff, a
17 licensed physician, and a mental health therapist determine that the administration is
18 reasonably necessary because the prisoner is in imminent danger due to inadequate
19 nutrition or hydration;

20 ▶ authorizes the sheriff to petition the court for an order to administer food or fluids to
21 a prisoner by involuntary means if required for more than three consecutive days;

22 ▶ provides that the court shall hold a hearing within three business days of receiving a
23 petition from a sheriff to administer food or fluids to a prisoner by involuntary
24 means;

25 ▶ provides that the prisoner has the right to attend the hearing, testify before the court,
26 present evidence, and cross-examine witnesses;

27 ▶ requires that any involuntary feeding or hydration by the county be conducted under



28 medical supervision and in a reasonable manner; and

29 ▶ provides exceptions to the provisions of this bill for medically imposed fasts or
30 religious fasts of reasonable duration.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 ENACTS:

37 **77-16b-101**, Utah Code Annotated 1953

38 **77-16b-102**, Utah Code Annotated 1953

39 **77-16b-103**, Utah Code Annotated 1953

40 **77-16b-104**, Utah Code Annotated 1953

41 **77-16b-105**, Utah Code Annotated 1953



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

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

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

46 **77-16b-101. Title.**

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

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

49 **77-16b-102. Definitions.**

50 As used in this chapter:

51 (1) "Medical supervision" means under the direction of a licensed physician, physician
52 assistant, or nurse practitioner.

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

54 (3) "Prisoner" means any person who is a pretrial detainee or has been committed to
55 the custody of a sheriff, and who is physically housed in a county jail.

56 (4) "Sheriff" means a county sheriff in charge of a county jail.

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

58 **77-16b-103. Involuntary feeding or hydration of prisoners -- Procedures, venue,**

59 **prisoner rights.**

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

63 (a) the sheriff;

64 (b) a licensed physician; and

65 (c) a mental health therapist who has been appointed by the sheriff.

66 (2) If reasonably necessary and not contrary to a court order, the panel may authorize,
67 by a majority vote, the involuntary feeding or hydration of a prisoner for up to three successive
68 days under immediate medical supervision and in a medically recognized and acceptable
69 manner.

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

72 (4) A sheriff may petition the district court where the county jail is located for an order
73 permitting the involuntary feeding or hydration of any prisoner who is likely to suffer severe
74 harm or death by refusing to accept sufficient nutrition or hydration.

75 (5) Prior to the filing of a petition under this section, a mental health therapist who is
76 designated by the sheriff shall conduct a mental health evaluation of the subject prisoner.

77 (6) Upon the filing of a petition, the district court shall hold a hearing within three
78 working days. The court:

79 (a) shall confidentially review the prisoner's medical and mental health records as they
80 are available;

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

83 (c) may exclude from the hearing any person whose presence is not necessary for the
84 purposes of the hearing, because of the introduction of personal medical and mental health
85 evidence.

86 (7) The district court shall state its findings of fact and conclusions of law on the
87 record.

88 (8) After conducting the hearing under Subsection (6), the district court shall issue an
89 order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of

90 evidence that:

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

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

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

97 (9) The sheriff shall serve copies of the petition and a notice of the district court
98 hearing on the prisoner and the prisoner's counsel, if represented by counsel, at least 48 hours
99 in advance of the hearing under Subsection (6).

100 (10) The prisoner has the right to attend the hearing, testify, present evidence, and
101 cross-examine witnesses.

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

103 **77-16b-104. Involuntary feeding or hydration of prisoners -- Standards,**
104 **continuing jurisdiction, and records.**

105 (1) Any involuntary nutrition or hydration of a prisoner pursuant to this chapter shall
106 be conducted under immediate medical supervision and in a medically recognized and
107 acceptable manner.

108 (2) Upon the filing of a petition pursuant to Section 77-16b-102, the court has the
109 continuing jurisdiction to review the prisoner's health status as long as the prisoner remains in
110 custody of the county jail.

111 (3) A county jail shall maintain records of any involuntary feeding or hydration of
112 prisoners under this chapter.

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

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

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

118 **77-16b-105. Involuntary feeding or hydration of prisoners -- Exceptions.**

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

Legislative Review Note
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Office of Legislative Research and General Counsel