

## HB0194S01 compared with HB0194

~~{deleted text}~~ shows text that was in HB0194 but was deleted in HB0194S01.

inserted text shows text that was not in HB0194 but was inserted into HB0194S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ provides that a ~~{county jail}~~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 ~~{sheriff}~~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;

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- ▶ authorizes the ~~{sheriff}~~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 ~~{sheriff}~~correctional facility administrator to administer food or fluids to a prisoner by involuntary means;
- ▶ provides that the prisoner has the right to attend the hearing, testify before the court, present evidence, and cross-examine witnesses;
- ▶ requires that any involuntary feeding or hydration by the ~~{county}~~correctional facility be conducted under medical supervision and in a reasonable manner; and
- ▶ provides exceptions to the provisions of this bill for medically imposed fasts or religious fasts of reasonable duration.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

77-16b-101, Utah Code Annotated 1953

77-16b-102, Utah Code Annotated 1953

77-16b-103, Utah Code Annotated 1953

77-16b-104, Utah Code Annotated 1953

77-16b-105, Utah Code Annotated 1953

77-16b-106, Utah Code Annotated 1953

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

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

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

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

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

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

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### 77-16b-102. Definitions.

As used in this chapter:

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

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

(~~1~~3) "Medical supervision" means under the direction of a licensed physician, physician assistant, or nurse practitioner.

(~~2~~4) "Mental health therapist" has the same definition as in Section 58-60-102.

(~~3~~5) "Prisoner" means any person who is a pretrial detainee or has been committed to the custody of a sheriff or the Utah Department of Corrections, and who is physically housed in a county jail.

~~(4) "Sheriff" means a county sheriff in charge of a county jail.~~  
~~correctional facility.~~

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

**77-16b-103. Involuntary feeding or hydration of prisoners -- ~~{Procedures, venue, prisoner rights}~~Emergency procedures.**

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

(a) the ~~{sheriff}~~correctional facility administrator;

(b) a licensed physician; and

(c) a mental health therapist who has been appointed by the ~~{sheriff}~~correctional facility administrator.

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

(a) for up to three successive days;

(b) under immediate medical supervision; and

(c) in a medically recognized and acceptable manner.

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

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~~(4) A sheriff chapter.~~

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

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

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

~~(5)2~~ Prior to the filing of a petition under this section, a mental health therapist who is designated by the {sheriff} correctional facility administrator shall conduct a mental health evaluation of the subject prisoner.

~~(6)3~~ Upon the filing of a petition, the district court shall hold a hearing within three working days. The court:

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

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

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

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

~~{ (8)4~~ After conducting the hearing under Subsection (~~(6)3~~), the district court shall issue an order to involuntarily feed or hydrate the prisoner, if the court finds by a preponderance of evidence that:

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

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

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

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~~(9) The sheriff~~(5) The district court shall state its findings of fact and conclusions of law on the record.

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

~~(10)7~~ The prisoner has the right to attend the hearing, testify, present evidence, and cross-examine witnesses.

Section ~~(4)5~~. Section ~~{77-16b-104}~~77-16b-105 is enacted to read:

~~{77-16b-104}~~77-16b-105. Involuntary feeding or hydration of prisoners -- Standards, continuing jurisdiction, and records.

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

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

(3) A ~~{county jail}~~correctional facility shall maintain records of any involuntary feeding or hydration of prisoners under this chapter.

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

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

Section ~~(5)6~~. Section ~~{77-16b-105}~~77-16b-106 is enacted to read:

~~{77-16b-105}~~77-16b-106. Involuntary feeding or hydration of prisoners -- Exceptions.

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

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**Legislative Review Note**

~~as of 2-2-12 10:56 AM~~

~~Office of Legislative Research and General Counsel~~