

Representative LaVar Christensen proposes the following substitute bill:

1 **ESSENTIAL TREATMENT AND INTERVENTION ACT**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: J. Stuart Adams

6 **LONG TITLE**

7 **General Description:**

8 This bill establishes a process for an individual suffering from a substance use disorder
9 to receive court-ordered essential treatment and intervention.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ enacts the Essential Treatment and Intervention Act; and
- 14 ▶ establishes a system for court-ordered essential treatment and intervention for an
- 15 individual suffering from a substance use disorder.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

- 22 62A-15-602, as last amended by Laws of Utah 2012, Chapter 248
- 23 62A-15-641, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 24 Chapter 8



26 ENACTS:

27 **62A-15-1201**, Utah Code Annotated 1953
28 **62A-15-1202**, Utah Code Annotated 1953
29 **62A-15-1203**, Utah Code Annotated 1953
30 **62A-15-1204**, Utah Code Annotated 1953
31 **62A-15-1205**, Utah Code Annotated 1953
32 **62A-15-1206**, Utah Code Annotated 1953
33 **62A-15-1207**, Utah Code Annotated 1953
34 **62A-15-1208**, Utah Code Annotated 1953
35 **62A-15-1209**, Utah Code Annotated 1953

36
37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **62A-15-602** is amended to read:

39 **62A-15-602. Definitions.**

40 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
41 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
42 Forensic Mental Health Facility, [and] Part 10, Declaration for Mental Health Treatment, and
43 Part 12, Essential Treatment and Intervention Act:

44 (1) "Adult" means a person 18 years of age or older.

45 (2) "Approved treatment facility or program" means a treatment provider that meets the
46 standards described in Subsection **62A-15-103(2)(a)(v)**.

47 [~~(2)~~] (3) "Commitment to the custody of a local mental health authority" means that an
48 adult is committed to the custody of the local mental health authority that governs the mental
49 health catchment area in which the proposed patient resides or is found.

50 [~~(3)~~] (4) "Designated examiner" means a licensed physician familiar with severe
51 mental illness, preferably a psychiatrist, designated by the division as specially qualified by
52 training or experience in the diagnosis of mental or related illness or another licensed mental
53 health professional designated by the division as specially qualified by training and at least five
54 years' continual experience in the treatment of mental or related illness. At least one
55 designated examiner in any case shall be a licensed physician. No person who is the applicant,
56 or who signs the certification, under Section **62A-15-631** may be a designated examiner in the

57 same case.

58 [¶] (5) "Designee" means a physician who has responsibility for medical functions
59 including admission and discharge, an employee of a local mental health authority, or an
60 employee of an agency that has contracted with a local mental health authority to provide
61 mental health services under Section 17-43-304.

62 (6) "Essential treatment" and "essential treatment and intervention" mean court-ordered
63 treatment at a local substance abuse authority or an approved treatment facility or program for
64 the treatment of an adult's substance use disorder.

65 [¶] (7) "Harmful sexual conduct" means any of the following conduct upon an
66 individual without the individual's consent, or upon an individual who cannot legally consent
67 to the conduct including under the circumstances described in Subsections 76-5-406(1) through
68 (12):

- 69 (a) sexual intercourse;
- 70 (b) penetration, however slight, of the genital or anal opening of the individual;
- 71 (c) any sexual act involving the genitals or anus of the actor or the individual and the
72 mouth or anus of either individual, regardless of the gender of either participant; or
- 73 (d) any sexual act causing substantial emotional injury or bodily pain.

74 [¶] (8) "Institution" means a hospital, or a health facility licensed under the
75 provisions of Section 26-21-9.

76 [¶] (9) "Licensed physician" means an individual licensed under the laws of this state
77 to practice medicine, or a medical officer of the United States government while in this state in
78 the performance of official duties.

79 [¶] (10) "Local comprehensive community mental health center" means an agency or
80 organization that provides treatment and services to residents of a designated geographic area,
81 operated by or under contract with a local mental health authority, in compliance with state
82 standards for local comprehensive community mental health centers.

83 (11) "Local substance abuse authority" means the same as that term is defined in
84 Section 62A-15-102 and described in Section 17-43-201.

85 [¶] (12) "Mental health facility" means the Utah State Hospital or other facility that
86 provides mental health services under contract with the division, a local mental health
87 authority, or organization that contracts with a local mental health authority.

88 [¶10] (13) "Mental health officer" means an individual who is designated by a local
89 mental health authority as qualified by training and experience in the recognition and
90 identification of mental illness, to interact with and transport persons to any mental health
91 facility.

92 [¶11] (14) "Mental illness" means a psychiatric disorder as defined by the current
93 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
94 American Psychiatric Association which substantially impairs a person's mental, emotional,
95 behavioral, or related functioning.

96 [¶12] (15) "Patient" means an individual who is:

97 (a) under commitment to the custody or to the treatment services of a local mental
98 health authority[:]; or

99 (b) undergoing essential treatment and intervention.

100 [¶13] (16) "Serious bodily injury" means bodily injury which involves a substantial
101 risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
102 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

103 [¶14] (17) "Substantial danger" means the person, by his or her behavior, due to
104 mental illness:

105 (a) is at serious risk to:

106 (i) commit suicide;

107 (ii) inflict serious bodily injury on himself or herself; or

108 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or
109 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

110 (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in
111 harmful sexual conduct.

112 [¶15] (18) "Treatment" means psychotherapy, medication, including the administration
113 of psychotropic medication, and other medical treatments that are generally accepted medical
114 and psychosocial interventions for the purpose of restoring the patient to an optimal level of
115 functioning in the least restrictive environment.

116 Section 2. Section **62A-15-641** is amended to read:

117 **62A-15-641. Restrictions and limitations -- Civil rights and privileges.**

118 (1) Subject to the general rules of the division, and except to the extent that the director

119 or his designee determines that it is necessary for the welfare of the patient to impose
120 restrictions, every patient is entitled to:

- 121 (a) communicate, by sealed mail or otherwise, with persons, including official
122 agencies, inside or outside the facility;
- 123 (b) receive visitors; and
- 124 (c) exercise all civil rights, including the right to dispose of property, execute
125 instruments, make purchases, enter contractual relationships, and vote, unless the patient has
126 been adjudicated to be incompetent and has not been restored to legal capacity.

127 (2) When any right of a patient is limited or denied, the nature, extent, and reason for
128 that limitation or denial shall be entered in the patient's treatment record. Any continuing
129 denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment
130 record. Notice of that continuing denial in excess of 30 days shall be sent to the division [or
131 to], the appropriate local mental health authority[.], the appropriate local substance abuse
132 authority, or an approved treatment facility or program whichever is most applicable to the
133 patient.

134 (3) Notwithstanding any limitations authorized under this section on the right of
135 communication, each patient is entitled to communicate by sealed mail with the appropriate
136 local mental health authority, the appropriate local substance abuse authority, an approved
137 treatment facility or program, the division, [his] the patient's attorney, and the court, if any, that
138 ordered [his] the patient's commitment or essential treatment. In no case may the patient be
139 denied a visit with the legal counsel or clergy of the patient's choice.

140 (4) Local mental health authorities, local substance abuse authorities, and approved
141 treatment facilities or programs shall provide reasonable means and arrangements for
142 informing involuntary patients of their right to release as provided in this chapter, and for
143 assisting them in making and presenting requests for release.

144 (5) Mental health facilities, local substance abuse authorities, and approved treatment
145 facilities or programs shall post a statement, [~~promulgated~~] created by the division, describing a
146 patient's rights under Utah law.

147 (6) Notwithstanding Section 53B-17-303, [any person] an individual committed under
148 this chapter has the right to determine the final disposition of [his] that individual's body after
149 death.

150 Section 3. Section **62A-15-1201** is enacted to read:

Part 12. Essential Treatment and Intervention Act

62A-15-1201. Statement of legislative intent.

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

157 Section 4. Section **62A-15-1202** is enacted to read:

62A-15-1202. Definitions.

159 As used in this part:

160 (1) "Essential treatment examiner" means:

161 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder; or
162 (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.

166 (2) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.

168 (3) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:

170 (a) drug overdose;

171 (b) suicide;

172 (c) serious bodily self-injury;

173 (d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or

175 (e) causing or attempting to cause serious bodily injury to another individual.

176 (4) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

179 Section 5. Section **62A-15-1203** is enacted to read:

62A-15-1203. Petition for essential treatment -- Contents -- Guarantee for costs.

181 (1) A relative seeking essential treatment and intervention for a sufferer of a substance
182 use disorder may file a petition with the district court of the county in which the sufferer of the
183 substance use disorder resides or is found.

184 (2) The petition shall include:

185 (a) the respondent's:

186 (i) legal name;

187 (ii) date of birth, if known;

188 (iii) social security number, if known; and

189 (iv) residence and current location, if known;

190 (b) the petitioner's relationship to the respondent;

191 (c) the name and residence of the respondent's legal guardian, if any and if known;

192 (d) a statement that the respondent:

193 (i) is suffering from a substance use disorder; and

194 (ii) if not treated for the substance use disorder presents a serious harm to self or
195 others;

196 (e) the factual basis for the statement described in Subsection (4)(d); and

197 (f) at least one specified local substance abuse authority or approved treatment facility
198 or program where the respondent may receive essential treatment.

199 (3) Any petition filed under this section:

200 (a) may be accompanied by proof of health insurance to provide for the respondent's
201 essential treatment; and

202 (b) shall be accompanied by a financial guarantee, signed by the petitioner or another
203 individual, obligating the petitioner or other individual to pay all treatment costs beyond those
204 covered by the respondent's health insurance policy for court-ordered essential treatment for the
205 respondent.

206 (4) Nothing in this section alters the contractual relationship between a health insurer
207 and an insured individual.

208 Section 6. Section **62A-15-1204** is enacted to read:

209 **62A-15-1204. Criteria for essential treatment and intervention.**

210 A district court shall order an individual to undergo essential treatment for a substance
211 use disorder when the district court determines by clear and convincing evidence that the

212 individual:

- 213 (1) suffers from a substance use disorder;
214 (2) can reasonably benefit from the essential treatment;
215 (3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
216 (4) presents a serious harm to self or others.

217 Section 7. Section **62A-15-1205** is enacted to read:

218 **62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.**

219 (1) A district court shall review the assertions contained in the verified petition

220 described in Section **62A-15-1203**.

221 (2) If the court determines that the assertions, if true, are sufficient to order the
222 respondent to undergo essential treatment, the court shall:
223 (a) set an expedited date for a time-sensitive hearing to determine whether the court
224 should order the respondent to undergo essential treatment for a substance use disorder;
225 (b) provide notice of:
226 (i) the contents of the petition, including all assertions made;
227 (ii) a copy of any order for detention or examination;
228 (iii) the date of the hearing;
229 (iv) the purpose of the hearing;
230 (v) the right of the respondent to be represented by legal counsel; and
231 (vi) the right of the respondent to request a preliminary hearing before submitting to an
232 order for examination;

233 (c) provide notice to:
234 (i) the respondent;
235 (ii) the respondent's guardian, if any; and
236 (iii) the petitioner; and
237 (d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be
238 examined before the hearing date by two essential treatment examiners;

239 (3) The essential treatment examiners shall examine the respondent to determine:

240 (a) whether the respondent meets each of the criteria described in Section

241 **62A-15-1204**;

242 (b) the severity of the respondent's substance use disorder, if any;

243 (c) what forms of treatment would substantially benefit the respondent, if the examiner
244 determines that the respondent has a substance use disorder; and
245 (d) the appropriate duration for essential treatment, if essential treatment is
246 recommended.

247 (4) An essential treatment examiner shall certify the examiner's findings to the court
248 within 24 hours after completion of the examination.

249 (5) The court may, based upon the findings of the essential treatment examiners,
250 terminate the proceedings and dismiss the petition.

251 (6) The parties may, at any time, make a binding stipulation to an essential treatment
252 plan and submit that plan to the court for court order.

253 (7) At the hearing, the petitioner and the respondent may testify and may
254 cross-examine witnesses.

255 (8) If, upon completion of the hearing, the court finds that the criteria in Section
256 62A-15-1204 are met, the court shall order essential treatment for an initial period that:

257 (a) does not exceed 360 days, subject to periodic review as provided in Section
258 62A-15-1206; and

259 (b) (i) is recommended by an essential treatment examiner; or
260 (ii) is otherwise agreed to at the hearing.

261 (9) The court shall designate the facility for the essential treatment, as:

262 (a) described in the petition;
263 (b) recommended by an essential treatment examiner; or
264 (c) agreed to at the hearing.

265 (10) The court shall issue an order that includes the court's findings and the reasons for
266 the court's determination.

267 (11) The court may order the petitioner to be the respondent's personal representative,
268 as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

269 Section 8. Section **62A-15-1206** is enacted to read:

270 **62A-15-1206. Periodic review -- Discharge.**

271 A local substance abuse authority or an approved treatment facility or program that
272 provides essential treatment shall:

273 (1) $\hat{H} \rightarrow$ [as frequently as practicable] at least every 90 days after the day on which a
273a patient is admitted, unless a court orders otherwise $\leftarrow \hat{H}$, examine or cause to be examined a
273b patient who has

274 been ordered to receive essential treatment;

275 (2) notify the patient and the patient's personal representative or guardian, if any, of the
276 substance and results of the examination;

277 (3) discharge an essential treatment patient if the examination determines that the
278 conditions justifying essential treatment and intervention no longer exist; and

279 (4) after discharging an essential treatment patient, send a report describing the reasons
280 for discharge to the clerk of the court where the proceeding for essential treatment was held and
281 to the patient's personal representative or guardian, if any.

282 Section 9. Section **62A-15-1207** is enacted to read:

283 **62A-15-1207. Seventy-two-hour emergency treatment.**

284 (1) A court may order a respondent to be hospitalized for up to 72 hours if:

285 (a) an essential treatment examiner has examined the respondent and certified that the
286 respondent meets the criteria described in Section **62A-15-1204**; and

287 (b) the court finds by clear and convincing evidence that the respondent presents an
288 imminent threat of serious harm to self or others as a result of a substance use disorder.

289 (2) An individual who is admitted to a hospital under this section shall be released
290 from the hospital within 72 hours after admittance, unless a treating physician or essential
291 treatment examiner determines that the individual continues to pose an imminent threat of
292 serious harm to self or others.

293 (3) If a treating physician or essential treatment examiner makes the determination
294 described in Subsection (2), the individual may be $\hat{H} \rightarrow$ [essential treatment] detained $\leftarrow \hat{H}$ for as

294a long as the threat

295 of serious harm remains imminent, but not more than 10 days after the day on which the
296 individual was hospitalized, unless a court orders otherwise.

297 (4) A treating physician or an essential treatment examiner shall, as frequently as
298 practicable, examine an individual hospitalized under this section and release the individual if
299 the examination determines that a threat of imminent serious harm no longer exists.

300 Section 10. Section **62A-15-1208** is enacted to read:

301 **62A-15-1208. Confidentiality.**

302 (1) The purpose of Title 62A, Chapter 15, Part 12, Essential Treatment and
303 Intervention Act, is to provide a process for essential treatment and intervention to save lives,
304 preserve families, and reduce substance use disorder, including opioid addiction.

305 (2) An essential treatment petition and any other document filed in connection with the
306 petition for essential treatment is confidential and protected.

307 (3) A hearing on an essential treatment petition is closed to the public, and only the
308 following individuals and their legal counsel may be admitted to the hearing:

309 (a) parties to the petition;

310 (b) the essential treatment examiners who completed the court-ordered examination

311 under Subsection 62A-15-1205(3);

312 (c) individuals who have been asked to give testimony; and

313 (d) individuals to whom notice of the hearing is required to be given under Subsection
314 62A-15-1205(2)(c).

315 (4) Testimony, medical evaluations, the petition, and other documents directly related
316 to the adjudication of the petition and presented to the court in the interest of the respondent
317 may not be construed or applied as an admission of guilt to a criminal offense.

318 (5) A court may, if applicable, enforce a previously existing warrant for a respondent or
319 a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

320 Section 11. Section **62A-15-1209** is enacted to read:

321 **62A-15-1209. Essential treatment for substance use disorder -- Rights of patient.**

322 All applicable rights guaranteed to a patient by Sections 62A-15-641 and 62A-15-642
323 shall be guaranteed to an individual who is ordered to undergo essential treatment for a
324 substance use disorder.