

Representative LaVar Christensen proposes the following substitute bill:

ESSENTIAL TREATMENT AND INTERVENTION ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Essential Treatment and Intervention Act; and
- ▶ establishes a system for court-ordered essential treatment and intervention for an

individual suffering from a substance use disorder.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-602, as last amended by Laws of Utah 2012, Chapter 248

62A-15-641, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
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

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

37 Section 1. Section [62A-15-602](#) is amended to read:

38 **[62A-15-602. Definitions.](#)**

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

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

44 (2) "Approved treatment facility or program" means the same as that term is defined in
45 Subsection [62A-15-103\(2\)\(a\)\(v\)](#).

46 [~~(2)~~] (3) "Commitment to the custody of a local mental health authority" means that an
47 adult is committed to the custody of the local mental health authority that governs the mental
48 health catchment area in which the proposed patient resides or is found.

49 [~~(3)~~] (4) "Designated examiner" means a licensed physician familiar with severe
50 mental illness, preferably a psychiatrist, designated by the division as specially qualified by
51 training or experience in the diagnosis of mental or related illness or another licensed mental
52 health professional designated by the division as specially qualified by training and at least five
53 years' continual experience in the treatment of mental or related illness. At least one
54 designated examiner in any case shall be a licensed physician. No person who is the applicant,
55 or who signs the certification, under Section [62A-15-631](#) may be a designated examiner in the
56 same case.

57 ~~[(4)]~~ (5) "Designee" means a physician who has responsibility for medical functions
58 including admission and discharge, an employee of a local mental health authority, or an
59 employee of an agency that has contracted with a local mental health authority to provide
60 mental health services under Section [17-43-304](#).

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

64 ~~[(5)]~~ (7) "Harmful sexual conduct" means any of the following conduct upon an
65 individual without the individual's consent, or upon an individual who cannot legally consent
66 to the conduct including under the circumstances described in Subsections [76-5-406](#)(1) through
67 (12):

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

73 ~~[(6)]~~ (8) "Institution" means a hospital, or a health facility licensed under the
74 provisions of Section [26-21-9](#).

75 ~~[(7)]~~ (9) "Licensed physician" means an individual licensed under the laws of this state
76 to practice medicine, or a medical officer of the United States government while in this state in
77 the performance of official duties.

78 ~~[(8)]~~ (10) "Local comprehensive community mental health center" means an agency or
79 organization that provides treatment and services to residents of a designated geographic area,
80 operated by or under contract with a local mental health authority, in compliance with state
81 standards for local comprehensive community mental health centers.

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

84 ~~[(9)]~~ (12) "Mental health facility" means the Utah State Hospital or other facility that
85 provides mental health services under contract with the division, a local mental health
86 authority, or organization that contracts with a local mental health authority.

87 ~~[(10)]~~ (13) "Mental health officer" means an individual who is designated by a local

88 mental health authority as qualified by training and experience in the recognition and
89 identification of mental illness, to interact with and transport persons to any mental health
90 facility.

91 ~~[(11)]~~ (14) "Mental illness" means a psychiatric disorder as defined by the current
92 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
93 American Psychiatric Association which substantially impairs a person's mental, emotional,
94 behavioral, or related functioning.

95 ~~[(12)]~~ (15) "Patient" means an individual who is:

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

98 (b) undergoing essential treatment and intervention.

99 ~~[(13)]~~ (16) "Serious bodily injury" means bodily injury which involves a substantial
100 risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
101 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

102 ~~[(14)]~~ (17) "Substantial danger" means the person, by his or her behavior, due to
103 mental illness:

104 (a) is at serious risk to:

105 (i) commit suicide;

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

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

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

111 ~~[(15)]~~ (18) "Treatment" means psychotherapy, medication, including the administration
112 of psychotropic medication, and other medical treatments that are generally accepted medical
113 and psychosocial interventions for the purpose of restoring the patient to an optimal level of
114 functioning in the least restrictive environment.

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

116 **62A-15-641. Restrictions and limitations -- Civil rights and privileges.**

117 (1) Subject to the general rules of the division, and except to the extent that the director
118 or his designee determines that it is necessary for the welfare of the patient to impose

119 restrictions, every patient is entitled to:

120 (a) communicate, by sealed mail or otherwise, with persons, including official
121 agencies, inside or outside the facility;

122 (b) receive visitors; and

123 (c) exercise all civil rights, including the right to dispose of property, execute
124 instruments, make purchases, enter contractual relationships, and vote, unless the patient has
125 been adjudicated to be incompetent and has not been restored to legal capacity.

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

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

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

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

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

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

149 **Part 12. Essential Treatment and Intervention Act**

150 **62A-15-1201. Statement of legislative intent.**

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

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

156 **62A-15-1202. Definitions.**

157 As used in this part:

158 (1) "Qualified health professional" means:

159 (a) a licensed physician;

160 (b) a psychologist:

161 (i) licensed under Title 58, Chapter 61, Psychologist Licensing Act; or

162 (ii) exempt from licensure under Section [58-1-307](#); or

163 (c) a mental health therapist, as defined in Section [58-60-102](#).

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

166 (3) "Substance use disorder" means:

167 (a) a problematic pattern of using alcohol, opioids, or a psycho-active substance,

168 including a controlled substance, that results in impairment in daily life or noticeable distress; or

169 (b) the same as that term is defined in the current edition of the Diagnostic and
170 Statistical Manual of Mental Disorders published by the American Psychiatric Association.

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

172 **62A-15-1203. Petition for essential treatment -- Contents -- Guarantee for costs.**

173 (1) An individual seeking essential treatment and intervention for a sufferer of a
174 substance use disorder may file a petition with the district court of the county in which the
175 sufferer of the substance use disorder resides or is found.

176 (2) A relative of the respondent, a guardian of the respondent, or a responsible
177 individual who has a close, personal relationship with the respondent may file the petition.

178 (3) The petition shall include:

179 (a) the respondent's:

180 (i) legal name;

- 181 (ii) date of birth, if known;
- 182 (iii) social security number, if known; and
- 183 (iv) residence and current location, if known;
- 184 (b) the petitioner's relationship to the respondent;
- 185 (c) the name and residence of the respondent's legal guardian, if any and if known;
- 186 (d) a statement that the respondent:
 - 187 (i) is suffering from a substance use disorder; and
 - 188 (ii) if not treated for the substance use disorder:
 - 189 (A) presents an imminent danger or threat of danger to self or others; or
 - 190 (B) presents a substantial likelihood of posing a threat of danger to self or others;
 - 191 (e) the factual basis for the statement described in Subsection (4)(d); and
 - 192 (f) at least one specified local substance abuse authority or approved treatment facility
 - 193 or program where the respondent may receive essential treatment.

- 194 (4) Any petition filed under this section:
 - 195 (a) may be accompanied by proof of health insurance to provide for the respondent's
 - 196 essential treatment; and
 - 197 (b) shall be accompanied by a financial guarantee, signed by the petitioner or another
 - 198 individual described in Subsection (3), obligating the petitioner or other individual to pay all
 - 199 treatment costs beyond those covered by the respondent's health insurance for court-ordered
 - 200 essential treatment for the respondent.

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

202 **62A-15-1204. Criteria for essential treatment and intervention.**

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

- 206 (1) suffers from a substance use disorder;
- 207 (2) can reasonably benefit from the essential treatment;
- 208 (3) is unlikely to substantially benefit from an alternative voluntary treatment; and
- 209 (4) presents a substantial threat of danger to self or others as a result of the individual's
- 210 substance use disorder.

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

212 62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.

213 (1) A district court shall review the assertions contained in the verified petition
214 described in Section [62A-15-1203](#).

215 (2) If the court determines that the assertions, if true, are sufficient to order the
216 respondent to undergo essential treatment, the court shall:

217 (a) set an expedited date for a time-sensitive hearing to determine whether the court
218 should order the respondent to undergo essential treatment for a substance use disorder;

219 (b) provide notice of:

220 (i) the contents of the petition, including all assertions made;

221 (ii) a copy of any order for detention or examination;

222 (iii) the date of the hearing;

223 (iv) the purpose of the hearing; and

224 (v) the right of the respondent to be represented by legal counsel;

225 (c) provide notice to:

226 (i) the respondent;

227 (ii) the respondent's guardian, if any; and

228 (iii) the petitioner; and

229 (d) order the respondent to be examined before the hearing date by two qualified health
230 professionals:

231 (i) one of whom, if reasonably available, may be selected by the respondent; and

232 (ii) both of whom may be from the local substance abuse authority or a designee of the
233 local substance abuse authority.

234 (3) The qualified health professionals shall examine the respondent to determine:

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

236 [62A-15-1204](#);

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

238 (c) what forms of treatment would substantially benefit the respondent, if the examiner
239 determines that the respondent has a substance use disorder; and

240 (d) the appropriate duration for essential treatment, if essential treatment is
241 recommended.

242 (4) The qualified health professionals shall certify their findings to the court within 24

243 hours after the examinations.

244 (5) The court may, based upon the findings of the qualified health professionals,
245 terminate the proceedings and dismiss the petition.

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

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

250 (8) If, upon completion of the hearing, the court finds that the criteria in Section
251 62A-15-1204 are met, the court shall order essential treatment for a period that:

252 (a) does not exceed 360 days; and

253 (b) (i) is recommended by a qualified health professional; or

254 (ii) is otherwise agreed to at the hearing.

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

256 (a) described in the petition;

257 (b) recommended by a qualified health professional; or

258 (c) agreed to at the hearing.

259 (10) The court shall issue a written order that includes the court's findings and the
260 reasons for the court's determination.

261 (11) Failure of a respondent to undergo treatment ordered under this section may place
262 the respondent in contempt of court.

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

264 **62A-15-1206. Seventy-two-hour emergency treatment.**

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

266 (a) a qualified health professional has examined the respondent and certified that the
267 respondent meets the criteria described in Section 62A-15-1204; and

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

270 (2) An individual who is admitted to a hospital under this section shall be released
271 from the hospital within 72 hours after admittance.

272 (3) No respondent ordered hospitalized under this section shall be held in jail pending
273 transportation to the hospital or evaluation unless:

274 (a) the court has previously found the respondent to be in contempt of court for:
275 (i) failure to undergo court-ordered essential treatment; or
276 (ii) failure to appear at the evaluation ordered under Section [62A-15-1205](#); or
277 (b) the individual is being detained for a lawful reason unrelated to the petition for
278 essential treatment and intervention.

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

280 **62A-15-1207. Confidentiality.**

281 (1) The purpose of Title 62A, Chapter 15, Part 12, Essential Treatment and
282 Intervention Act, is to encourage essential treatment to save lives, preserve families, and reduce
283 substance use disorder, including opioid addiction.

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

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

288 (a) parties to the petition;

289 (b) the qualified health professionals who completed the court-ordered examination
290 under Subsection [62A-15-1205\(2\)\(d\)](#);

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

292 (d) individuals to whom notice of the hearing is required to be given under Subsection
293 [62A-15-1205\(2\)\(c\)](#).

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

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

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

300 **62A-15-1208. Essential treatment for substance use disorder -- Rights of patient.**

301 All applicable rights guaranteed to a patient by Sections [62A-15-641](#) and [62A-15-642](#)
302 shall be guaranteed to an individual who is ordered to undergo essential treatment for a
303 substance use disorder.