

HB0286S01 compared with HB0286

~~text~~ shows text that was in HB0286 but was deleted in HB0286S01.

Inserted text shows text that was not in HB0286 but was inserted into HB0286S01.

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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:

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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

ENACTS:

62A-15-1201, Utah Code Annotated 1953

62A-15-1202, Utah Code Annotated 1953

62A-15-1203, Utah Code Annotated 1953

62A-15-1204, Utah Code Annotated 1953

62A-15-1205, Utah Code Annotated 1953

62A-15-1206, Utah Code Annotated 1953

62A-15-1207, Utah Code Annotated 1953

62A-15-1208, Utah Code Annotated 1953

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

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

62A-15-602. Definitions.

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

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

(2) "Approved treatment facility or program" means the same as that term is defined in ~~Section 62A-15-301~~ Subsection 62A-15-103(2)(a)(v).

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

~~(3)~~ (4) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by

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training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) undergoing essential treatment and intervention.

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

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

(a) is at serious risk to:

(i) commit suicide;

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

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

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

~~(15)~~ (18) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical

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and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

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

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

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

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

(b) receive visitors; and

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

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

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

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

(5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, [~~promulgated~~] created by the division, describing a

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patient's rights under Utah law.

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

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 relatives and other caring individuals 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.

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

62A-15-1202. Definitions.

As used in this part:

(1) "Qualified health professional" means:

(a) a licensed physician;

(b) a psychologist:

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

(ii) exempt from licensure under Section 58-1-307; or

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

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

(3) "Substance use disorder" means:

(a) a problematic pattern of using alcohol, opioids, or ~~any~~ a psycho-active substance, including a controlled substance, that results in impairment in daily life or noticeable distress; or

(b) 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.

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

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

(1) An individual seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the district court of the county in which the

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sufferer of the substance use disorder resides or is found.

~~{ (2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."~~

~~{ (3) A relative of the respondent, a guardian of the respondent, or a responsible individual who has a close, personal relationship with the respondent may file the petition.~~

~~{ (4) The petition shall include:~~

~~(a) the respondent's:~~

~~(i) legal name;~~

~~(ii) date of birth, if known;~~

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

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

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

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

~~(d) a statement that the respondent:~~

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

~~(ii) if not treated for the substance use disorder:~~

~~(A) presents an imminent danger or threat of danger to self or others; or~~

~~(B) presents a substantial likelihood of posing a threat of danger to self or others;~~

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

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

~~{ (5) Any petition filed under this section:~~

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

~~(b) shall be accompanied by a financial guarantee, signed by the petitioner or another individual described in Subsection (3), obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance for court-ordered essential treatment for the respondent.~~

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

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

A district court shall order an individual to undergo essential treatment for a substance

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use disorder when the district court determines by clear and convincing evidence that the individual:

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

~~}{~~ (b) poses a substantial threat of danger to self or others in the near future.

~~}{~~ Section 7. Section **62A-15-1205** is enacted to read:

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

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

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

(a) set ~~}{a}~~an expedited date for a time-sensitive hearing ~~}{ within 14 days after the day on which the petitioner files the petition }~~ to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;

(b) provide notice of:

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

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

(iii) the date of the hearing;

(iv) the purpose of the hearing; and

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

(c) provide notice to:

(i) the respondent;

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

(iii) the petitioner; and

(d) order the respondent to be examined ~~}{no later than 24 hours }~~ before the hearing date by two qualified health professionals:

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

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

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local substance abuse authority.

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

(a) whether the respondent meets each of the criteria described in Section 62A-15-1204;

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

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

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

(4) The qualified health professionals shall certify their findings to the court within 24 hours after the examinations.

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

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

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

~~(8) The court shall conduct the hearing in an informal manner, consistent with orderly procedure.~~

~~(9) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.~~

~~†~~ (~~†10~~8) If, upon completion of the hearing, the court finds that the criteria in Section 62A-15-1204 are met, the court shall order essential treatment for a period that:

(a) does not exceed 360 days; and

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

(ii) is otherwise agreed to at the hearing.

~~(~~†11~~9)~~ The court shall designate the facility for the essential treatment, as:

(a) described in the petition;

(b) recommended by a qualified health professional; or

(c) agreed to at the hearing.

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~~(12)~~10 The court shall issue a written order that includes the ~~evidence relied upon~~court's findings and the reasons for the court's determination.

~~(13)~~11 Failure of a respondent to undergo treatment ordered under this section may place the respondent in contempt of court.

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

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

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

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

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

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

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

(a) the court has previously found the respondent to be in contempt of court for:

(i) failure to undergo court-ordered essential treatment; or

(ii) failure to appear at the evaluation ordered under Section 62A-15-1205; or

(b) the individual is being detained for a lawful reason unrelated to the petition for essential treatment and intervention.

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

62A-15-1207. Confidentiality.

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

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

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

(a) parties to the petition;

(b) the qualified health professionals who completed the court-ordered examination

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under Subsection 62A-15-1205(2)(d):

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

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

(4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be ~~used as evidence for the purpose of criminal prosecution of the respondent and may not be~~ construed **or applied** as an admission of guilt **to a criminal offense**.

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

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

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

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

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Legislative Review Note

~~Office of Legislative Research and General Counsel†~~