

## HB0299S01 compared with HB0299

~~text~~ shows text that was in HB0299 but was deleted in HB0299S01.

Inserted text shows text that was not in HB0299 but was inserted into HB0299S01.

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Representative Edward H. Redd proposes the following substitute bill:

### SUBSTANCE ABUSE AND MENTAL HEALTH ACT~~}~~

#### ~~}~~AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Edward H. Redd**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions of the Substance Abuse and Mental Health Act.

##### Highlighted Provisions:

This bill:

- ▶ clarifies the role of a mental health officer;
- ▶ modifies definitions;
- ▶ removes references to the Utah State Hospital Board, which no longer exists;
- ▶ removes the exemption of security officers from the public safety retirement system;
- ▶ updates code provisions in accordance with the existing practice of private hospitals providing inpatient mental health treatment;

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- ▶ makes changes to procedures and criteria for civil commitments;
- ▶ gives officers authority to not take a mentally ill individual into custody in order to avoid escalating a dangerous situation; and
- ▶ makes technical changes.

### 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-15-603**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
Chapter 8

**62A-15-613**, as last amended by Laws of Utah 2006, Chapter 139

**62A-15-625**, as last amended by Laws of Utah 2003, Chapter 195

**62A-15-627**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
Chapter 8

**62A-15-628**, as last amended by Laws of Utah 2003, Chapter 195

**62A-15-629**, as last amended by Laws of Utah 2011, Chapter 366

**62A-15-631**, as last amended by Laws of Utah 2013, Chapters 29 and 312

**62A-15-632**, as last amended by Laws of Utah 2011, Chapter 366

**62A-15-635**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
Chapter 8

**62A-15-637**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,  
Chapter 8

**62A-15-703**, as last amended by Laws of Utah 2008, Chapter 3

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*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

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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:

(1) "Adult" means ~~[a person]~~ an individual 18 years of age or older.

(2) "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]~~ where the adult resides or is found.

(3) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.

~~[(3)]~~ (4) "Designated examiner" means a licensed physician ~~[familiar with severe mental illness, preferably a psychiatrist], preferably a psychiatrist, who is~~ designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or ~~[another]~~ 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 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]~~ entity that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.

~~[(5)]~~ (6) "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]~~ including the nonconsensual 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.

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~~[(6)]~~ (7) "Institution" means a hospital<sup>[5]</sup> or a health facility licensed under ~~[the provisions of]~~ Section 26-21-9.

~~[(7)]~~ "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)]~~ "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.]~~

~~[(9)]~~ (8) "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]~~ an entity that contracts with a local mental health authority, or an entity that provides acute inpatient psychiatric services to a patient.

~~[(10)]~~ (9) "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 {an individual to a designated } mental health facility:]~~

(a) apply for and provide certification for a temporary commitment; or

(b) assist in the arrangement of transportation to a designated mental health facility.

~~[(11)]~~ (10) "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:]~~

(a) a psychiatric disorder that substantially impairs a person's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

~~[(12)]~~ (11) "Patient" means an individual under commitment to the custody or to the

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treatment services of a local mental health authority.

(12) "Physician" means an individual who is:

(a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

(b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(13) "Serious bodily injury" means bodily injury [~~which~~] that 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) "Substantial danger" means [~~the person, by his or her behavior, due to mental illness~~] that due to mental illness, an individual is at serious risk of:

~~[(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; or]~~

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

(a) suicide;

(b) serious bodily self-injury;

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

(d) causing or attempting to cause serious bodily injury to another individual; or

(e) engaging in harmful sexual conduct.

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

Section 2. Section **62A-15-603** is amended to read:

**62A-15-603. Administration of state hospital -- Division -- Authority.**

(1) The administration of the state hospital is vested in the division where it shall

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function and be administered as a part of the state's comprehensive mental health program and, to the fullest extent possible, shall be coordinated with local mental health authority programs. [~~When it becomes feasible the board may direct that the hospital be decentralized and administered at the local level by being integrated with, and becoming a part of, the community mental health services.~~]

~~[(2) The division shall succeed to all the powers, discharge all the duties, and perform all the functions, duties, rights, and responsibilities pertaining to the state hospital which by law are conferred upon it or required to be discharged or performed. However, the functions, powers, duties, rights, and responsibilities of the division and of the board otherwise provided by law and by this part apply.]~~

(2) The division has the same powers, duties, rights, and responsibilities as, and shall perform the same functions that by law are conferred or required to be discharged or performed by, the state hospital.

(3) Supervision and administration of security responsibilities for the state hospital is vested in the division. The executive director shall designate, as special function officers, individuals with peace officer authority to perform special security functions for the state hospital [~~that require peace officer authority. These special function officers may not become or be designated as members of the Public Safety Retirement System~~].

~~[(4) Directors of mental health facilities that house involuntary detainees or detainees committed pursuant to judicial order may establish secure areas, as prescribed in Section 76-8-311.1, within the mental health facility for the detainees.]~~

(4) A director of a mental health facility that houses an involuntary patient or a patient committed by judicial order may establish secure areas, as provided in Section 76-8-311.1, within the mental health facility for the patient.

Section 3. Section **62A-15-613** is amended to read:

**62A-15-613. Appointment of superintendent -- Qualifications -- Powers and responsibilities.**

(1) The director, with the advice [~~and~~], consent [~~of the board~~], and [~~the~~] approval of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.

(2) The superintendent shall have a bachelor's degree from an accredited university or

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college, be experienced in administration, and be knowledgeable in matters concerning mental health.

(3) [~~Subject to the rules of the board, the~~] The superintendent has general responsibility for the buildings, grounds, and property of the state hospital. The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care and management of the state hospital, and shall fix [~~their~~] the employees' compensation and administer personnel functions according to the standards of the Department of Human Resource Management.

Section 4. Section **62A-15-625** is amended to read:

### **62A-15-625. Voluntary admission of adults.**

~~[(1) A local mental health authority or its designee may admit to that authority, for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.]~~

~~[(2)(a) No adult may be committed or continue to be committed to a local mental health authority against his will except as provided in this chapter.]~~

~~[(b) A person under 18 years of age may be committed to the physical custody of a local mental health authority only after a court commitment proceeding in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.]~~

(1) A local mental health authority, a designee of a local mental health authority, or another mental health facility may admit for observation, diagnosis, care, and treatment an adult who applies for voluntary admission and who has a mental illness or exhibits the symptoms of a mental illness.

(2) No adult may be committed to a local mental health authority against that adult's will except as provided in this chapter.

(3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Subsection 77-18-1(13) have been met.

Section 5. Section **62A-15-627** is amended to read:

### **62A-15-627. Release of voluntary patient -- Exceptions.**

(1) A [~~voluntary~~] patient who is voluntarily admitted, as described in Section

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62A-15-625, and who requests release, verbally or in writing, or whose release is requested in writing by ~~[his]~~ the patient's legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

~~[(1) if the patient was voluntarily admitted on his own application, and]~~

(a) release may be conditioned upon the agreement of the patient, if the request for release is made by ~~[a person]~~ an individual other than the patient~~[- release may be conditioned upon the agreement of the patient; and];~~ or

~~[(2) (b) if [a] the admitting local mental health authority, [or its designee is of the opinion that release of a patient would be unsafe for that patient or others;] designee of the local mental health authority, or mental health facility has cause to believe that release of the patient ~~has a mental illness and presents a substantial danger to self;~~ would be unsafe for the patient or others, release of that patient may be postponed ~~{f}~~ for up to 48 hours, excluding weekends and holidays, provided that the ~~[local mental health]~~ admitting authority, ~~[or its]~~ designee, or facility shall cause to be instituted involuntary commitment proceedings with the district court within the specified time period ~~[- unless cause no longer exists for instituting those proceedings. Written]~~ ~~{ by: }~~~~

~~(i) using the temporary commitment procedures described in Section 62A-15-629; and~~

~~(ii) providing~~ 2) The admitting authority, designee, or facility shall provide written notice of ~~[that]~~ the postponement ~~[with]~~ and the reasons~~[- shall be given]~~ for the postponement to the patient without undue delay.

~~{2}~~ 3) No judicial proceedings for involuntary commitment may be commenced with respect to a voluntary patient unless ~~[he]~~ the patient has requested release.

Section 6. Section **62A-15-628** is amended to read:

### **62A-15-628. Involuntary commitment -- Procedures.**

(1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:

(a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 62A-15-629(1)(a);

(b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 62A-15-629~~{2}~~(1)(b); or



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(c) commitment on court order, as provided in Section 62A-15-631.

(2) A person under 18 years of age may be committed to the physical custody of a local mental health authority only ~~[after a court commitment proceeding]~~ in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

Section 7. Section **62A-15-629** is amended to read:

### **62A-15-629. Temporary commitment -- Requirements and procedures.**

(1) ~~[(a)]~~ An adult ~~[may]~~ shall be temporarily, involuntarily committed to a local mental health authority upon:

(a) a written application that:

(i) ~~[written application]~~ is completed by a responsible ~~[person]~~ individual who has reason to know, stating a belief that the ~~[individual]~~ adult, due to mental illness, is likely to ~~[cause serious injury]~~ pose substantial danger to self or others if not ~~[immediately]~~ restrained~~[-]~~ and stating the personal knowledge of the ~~[individual's]~~ adult's condition or circumstances ~~[which]~~ that lead to ~~[that]~~ the individual's belief; and

(ii) includes a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the ~~[individual]~~ adult within a three-day period immediately preceding that certification, and that the physician or designated examiner is of the opinion that the ~~[individual has a mental illness and, because of the individual's mental illness, is likely to injure self or others if not immediately restrained.]~~ adult due to mental illness poses a substantial danger to self or others; or

~~[(b) Application and certification as described in Subsection (1)(a) authorizes any peace officer to take the individual into the custody of a local mental health authority and transport the individual to that authority's designated facility.]~~

~~[(2) If a duly authorized peace officer observes a person involved in conduct that gives the officer probable cause to believe that the person has a mental illness, as defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into protective custody. The peace officer shall transport the person to be transported to the designated facility of the appropriate local mental health authority pursuant to this section, either on the basis of the peace officer's~~

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~~own observation or on the basis of a mental health officer's observation that has been reported to the peace officer by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of the local mental health authority and make application for commitment of that person to the local mental health authority. The application shall be on a prescribed form and shall include the following:]~~

~~[(a) a statement by the officer that the officer believes, on the basis of personal observation or on the basis of a mental health officer's observation reported to the officer by the mental health officer, that the person is, as a result of a mental illness, a substantial and immediate danger to self or others;]~~

~~[(b) the specific nature of the danger;]~~

~~[(c) a summary of the observations upon which the statement of danger is based; and]~~

~~[(d) a statement of facts which called the person to the attention of the officer.]~~

~~(b) a peace officer or a mental health officer:~~

~~(i) observing an adult's conduct that gives the officer probable cause to believe that:~~

~~(A) the adult has a mental illness; and~~

~~(B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and~~

~~(ii) completing a temporary commitment application that:~~

~~(A) is on a form prescribed by the division;~~

~~(B) states the officer's belief that the adult poses a substantial danger to self or others;~~

~~(C) states the specific nature of the danger;~~

~~(D) provides a summary of the observations upon which the statement of danger is based; and~~

~~(E) provides a statement of the facts that called the adult to the officer's attention.~~

~~(2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall document the change and release the patient.~~

~~(3) A [person] patient committed under this section may be held for a maximum of 24 hours after commitment, excluding Saturdays, Sundays, and legal holidays[. ~~At the expiration of that time period, the person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-15-631. If that application has been made, an~~~~

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~~order of detention may be entered under Subsection 62A-15-631(3). If no order of detention is issued, the patient shall be released unless he has made voluntary application for admission.], unless:~~

~~(a) as described in Section 62A-15-631, an application for involuntary commitment is commenced, which may be accompanied by an order of detention under Subsection 62A-15-631(4); or~~

~~(b) the patient has made a voluntary application for admission.~~

~~[(4) Transportation of persons with a mental illness pursuant to Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law enforcement authority or, under the appropriate law enforcement's authority, by ambulance to the extent that Subsection (5) applies. However, if the designated facility is outside of that authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the person to be transported by ambulance to the extent that Subsection (5) applies.]~~

~~[(5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In addition, if the person requires physical medical attention, the peace officer shall direct that transportation be to an appropriate medical facility for treatment.]~~

~~(4) Upon a written application described in Subsection (1)(a) or the observation and belief described in Subsection (1)(b), the adult shall be:~~

~~(a) taken into a peace officer's protective custody, by reasonable means, if necessary for public safety; and~~

~~(b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:~~

~~(i) an ambulance, if the adult meets any of the criteria of Section 26-8a-305;~~

~~(ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, designated examiner, or mental health officer;~~

~~(iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the individual to be committed is present, if the individual is not transported by ambulance; or~~

~~(iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law~~

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enforcement authority described in Subsection (4)(b)(iii) and the individual is not transported by ambulance.

(5) Notwithstanding Subsection (4):

(a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention; and

(b) ~~if a peace officer may not take~~ if an officer determines through the officer's experience and training that taking an individual into protective custody or ~~transport~~ transporting an individual for temporary commitment ~~if the action~~ would increase the risk of substantial danger to the individual or others, ~~as determined by the officer's experience and training, the~~ a peace officer may exercise discretion to not take the individual into custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency ~~;~~ and any applicable federal ~~;~~ or state statute, or case law.

(6) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.

This section does not create a special duty of care.

Section 8. Section **62A-15-631** is amended to read:

**62A-15-631. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.**

~~[(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual has a mental illness and should be involuntarily committed. The application shall include:]~~

(1) A responsible person who has reason to know of an adult's mental illness and the condition or circumstances that have lead to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the district court in the county where the proposed patient resides or is found, a written application that includes:

(a) unless the court finds that the information is not reasonably available, the [individual's] proposed patient's:

(i) name;

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- (ii) date of birth; and
- (iii) social security number; and
- ~~[(b) either:]~~

(b) (i) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that the physician or designated examiner is of the opinion that the individual ~~[is mentally ill]~~ has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the individual has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based.

(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(b) The consultation described in Subsection (2)(a):

(i) may take place at or before the hearing; and

(ii) is required if the local mental health authority appears at the hearing.

(3) In a commitment application, at least one designated examiner shall be a licensed physician. Neither the civil commitment applicant nor the individual who signs the certification under Subsection (1) may be a designated examiner in the same application.

~~[(3)]~~ (4) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger, as defined in Section 62A-15-602, to self or others requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary

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emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, the examiner shall immediately send the report in writing to the clerk of the court.

~~[(4)]~~ (5) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient before, or upon, placement in the custody of a local mental health authority or, with respect to any individual presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.

~~[(5)]~~ (6) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

~~[(6)]~~ (7) Proceedings for commitment of an individual under the age of 18 years to ~~[the division]~~ a local mental health authority may be commenced ~~[by filing a written application with the juvenile court in accordance with the provisions of]~~ in accordance with Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

~~[(7)]~~ (8) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

~~[(8)]~~ (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the

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issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the basis for the patient's involuntary commitment, and that findings resulting from the examination will be made available to the court.

(c) A time shall be set for a hearing to be held within 10 calendar days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that the patient has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

(d) ~~{When the length of time between temporary commitment and the initial commitment court hearing exceeds 72 hours, the local mental health authority or a designee of the local mental health authority shall review the patient's condition regularly until the commencement of the initial court hearing. }~~ If the local mental health authority or the designee determines before the court hearing that the conditions justifying the findings leading to a hearing for commitment no longer exist, the local mental health authority or the designee shall immediately report that determination to the court.

~~[(9)]~~ (10) (a) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the patient before the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the patient resides or

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was found.

(b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(e) 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.

(f) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

- (A) the detention order;
- (B) admission notes;
- (C) the diagnosis;
- (D) any doctors' orders;
- (E) progress notes;
- (F) nursing notes; and
- (G) medication records pertaining to the current commitment.

(ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

~~[(10)]~~ (11) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection ~~[(9)]~~ (10)(e), the court finds by clear and convincing evidence that:

- (a) the proposed patient has a mental illness;



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(b) because of the proposed patient's mental illness the proposed patient poses a substantial danger~~[, as defined in Section 62A-15-602,]~~ to self or others, which may include the inability to provide the basic necessities of life such as food, clothing, ~~[and]~~ or shelter, if allowed to remain at liberty;

(c) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(d) there is no appropriate less-restrictive alternative to a court order of commitment; and

(e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to the individual's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall ~~[forthwith]~~ dismiss the proceedings.

~~[(11)]~~ (12) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection ~~[(10)]~~ (11) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections ~~[(8)]~~ (9) through ~~[(10)]~~ (11).

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(c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections ~~[(8)]~~ (9) through ~~[(10)]~~ (11).

~~[(12)]~~ (13) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

~~[(13)]~~ (14) Any person committed as a result of an original hearing or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

~~[(14)]~~ (15) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 9. Section **62A-15-632** is amended to read:

**62A-15-632. Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.**

(1) After ~~[a person]~~ an individual has been involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631~~[(10)]~~(11), the conditions justifying

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commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection 62A-15-631~~[(H)]~~(12) or conditional release under Section 62A-15-637, if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment the patient will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in the patient's ability to function in the least restrictive environment, thereby making the patient a substantial danger to self or others.

(2) A patient whose treatment is continued or who is conditionally released under the terms of this section, shall be maintained in the least restrictive environment available that can provide the patient with the treatment that is adequate and appropriate.

Section 10. Section **62A-15-635** is amended to read:

### **62A-15-635. Notice of commitment.**

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority ~~[pursuant to]~~ under Section 62A-15-629 on the application of ~~[any person]~~ an individual other than ~~[his]~~ the patient's legal guardian, spouse, or next of kin, the local mental health authority or ~~[its]~~ a designee of the local mental health authority shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Section 11. Section **62A-15-637** is amended to read:

### **62A-15-637. Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.**

(1) A local mental health authority or ~~[its]~~ a designee of a local mental health authority may release an improved patient to less restrictive treatment ~~[as it may specify, and when agreed to in writing by the patient.]~~ when:

- (a) the authority specifies the less restrictive treatment; and
- (b) the patient agrees in writing to the less restrictive treatment.

(2) Whenever a local mental health authority or ~~[its designee]~~ a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the ~~[patient shall be discharged]~~ local mental health authority or the designee shall discharge the patient. If the patient has been committed through judicial proceedings, ~~[a report describing that determination shall be sent]~~ the local mental health authority or the designee shall prepare a report describing the determination and shall send the report to the clerk of the

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court where the proceedings were held.

~~[(2)]~~ (3) (a) A local mental health authority or ~~[its designee]~~ a designee of a local mental health authority is authorized to issue an order for the immediate placement of a current patient ~~[not previously released from an order of commitment]~~ into a more restrictive environment, if:

(i) the local mental health authority or ~~[its designee]~~ a designee of a local mental health authority has reason to believe that the ~~[less restrictive environment in which the patient has been placed]~~ patient's current environment is aggravating the patient's mental illness ~~[as defined in Subsection 62A-15-631(10), or that]; or~~

(ii) the patient has failed to comply with the specified treatment plan to which ~~[he]~~ the patient had agreed in writing.

(b) ~~[That]~~ An order for a more restrictive environment shall include the reasons therefor and shall authorize any peace officer to take the patient into physical custody and transport ~~[him]~~ the patient to a facility designated by the ~~[division]~~ local mental health authority. Prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued release from inpatient care, copies of the order shall be personally delivered to the patient and sent to the person in whose care the patient is placed. The order shall also be sent to the patient's counsel of record and to the court that entered the original order of commitment. The order shall inform the patient of the right to a hearing, as prescribed in this section, the right to appointed counsel, and the other procedures prescribed in Subsection 62A-15-631~~[(9)]~~(10).

(c) If the patient ~~[has been in the]~~ was in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or ~~[his]~~ the patient's representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-15-631, with the exception of Subsection 62A-15-631~~[(10)]~~(11), unless, by the time set for the hearing, the patient has ~~[again been placed in]~~ returned to the less restrictive environment~~[-]~~ or the patient has in writing withdrawn ~~[his]~~ the request for a hearing.

~~[(3) The court shall find that either:]~~

~~[(a) the less restrictive environment in which the patient has been placed is aggravating~~

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~~the patient's dangerousness or mental illness as defined in Subsection 62A-15-631(10), or the patient has failed to comply with a specified treatment plan to which he had agreed in writing; or]~~

~~[(b) the less restrictive environment in which the patient has been placed is not aggravating the patient's mental illness or dangerousness, and the patient has not failed to comply with any specified treatment plan to which he had agreed in writing, in which event the order shall designate that the individual shall be placed and treated in a less restrictive environment appropriate for his needs.]~~

(d) The court shall make findings as to whether the criteria in Subsections (3)(a) and (b) were met and whether the patient is in the least restrictive environment that is appropriate for the patient's needs.

~~[(4)] (e) The court order shall also designate the environment for the patient's care and the period for which the ~~[individual]~~ patient shall be treated, in no event to extend beyond expiration of the original order of commitment.~~

~~[(5)] (4) Nothing contained in this section prevents a local mental health authority or its designee, pursuant to Section 62A-15-636, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.~~

Section 12. Section **62A-15-703** is amended to read:

**62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.**

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

- (a) shall be a designated examiner, as defined in Subsection 62A-15-602(3); and
- (b) may not profit, financially or otherwise, from the commitment or physical

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placement of the child in that setting.

(4) Upon determination by ~~[the]~~ a fact finder that the following circumstances clearly exist, ~~[he]~~ the fact finder may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection 62A-15-602(8);

(b) the child demonstrates a risk of ~~[harm to himself]~~, or a reasonable fear of the risk of, substantial danger to self or others;

~~[(c) the child is experiencing significant impairment in his ability to perform socially;]~~

~~[(d)]~~ (c) the child will benefit from care and treatment by the local mental health authority; and

~~[(e)]~~ (d) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible~~[:]~~ and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the ~~[person who submitted the petition for commitment]~~ petitioner, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in ~~[his]~~ the fact finder's discretion, receive the testimony of any other person.

(d) The fact finder may allow ~~[the]~~ a child to waive ~~[his]~~ the child's right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

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- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) ~~[When]~~ At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and ~~[his]~~ the child's parent or legal guardian of that decision~~[-]~~ and of the reasons for ordering commitment ~~[at the conclusion of the hearing, and also in writing]~~.

(iii) The neutral and detached fact finder shall state in writing the basis of ~~[his]~~ the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

~~[(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.]~~

(6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.

(7) A local mental health authority shall have physical custody of each child committed

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to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition[-] or that of [~~his~~] the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority,



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its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

- (i) the original petition for commitment;
- (ii) admission notes;
- (iii) diagnosis;
- (iv) physicians' orders;
- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, [~~his~~] the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive [~~his~~] the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its

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designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to ~~his~~ the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating ~~his~~ the child's mental illness, or increasing the risk of harm to ~~himself~~ self or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport ~~him~~ the child to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, ~~his~~ the child's parent or legal guardian, the administrator of the more restrictive environment, or ~~his~~ the administrator's designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or ~~his~~ the child's representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating ~~his~~ the child's mental illness~~;~~ or increasing the risk of harm to ~~himself~~ self or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating ~~his~~ the child's mental illness~~;~~ or increasing the risk of harm to ~~himself~~ self or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in

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conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority [~~pursuant to~~] under this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment [~~which~~] that may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

†

~~Legislative Review Note~~

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