SUBSTANCE ABUSE AND MENTAL HEALTH ACT

AMENDMENTS

2018 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Edward H. Redd
Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:
• modifies definitions;
• changes the date by which local substance abuse authorities and local mental health authorities shall annually submit a service plan to the Division of Substance Abuse and Mental Health within the Department of Human Services;
• expands the division's responsibilities with respect to peer support services to include peer support services for individuals with mental health disorders;
• amends peer support services provisions;
• recodifies peer support services provisions;
• requires rulemaking;
• clarifies the role of a mental health officer;
• removes obsolete references to the Utah State Hospital Board;
• 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;
• 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-15-103, as last amended by Laws of Utah 2017, Chapter 163
62A-15-602, as last amended by Laws of Utah 2017, Chapter 408
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 2017, Chapter 181
62A-15-705, as last amended by Laws of Utah 2003, Chapter 195

REPEALS:
62A-15-402, as enacted by Laws of Utah 2012, Chapter 179

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 62A-15-103 is amended to read:


(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) [promulgate] make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the [Department of Human Services] department under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

(vii) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with substance [abuse] use disorder and mental illness that addresses criminal risk factors;

(viii) evaluate the effectiveness of programs described in this Subsection (2);

(ix) consider the impact of the programs described in this Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and
(x) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(iii) [promulgate] make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) [promulgate] make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that [all individuals] an individual receiving services through a local mental health [authorities] authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of [any] local, state, and federal funds;

(viii) monitor the expenditure of public funds by:
(A) local substance abuse authorities;
(B) local mental health authorities; and
(C) in counties where they exist, [the] a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health [authorities]
authority;
(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;
(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;
(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:
(A) a statewide comprehensive continuum of substance abuse services;
(B) a statewide comprehensive continuum of mental health services;
(C) services result in improved overall health and functioning;
(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;
(E) compliance, where appropriate, with the certification requirements in Subsection (2)[(ii)(i)]; and
(F) appropriate expenditure of public funds;
(xii) review and make recommendations regarding each local substance abuse authority's contract with [its] the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with [its] the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;
(xiii) monitor and ensure compliance with division rules and contract requirements; and
(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(5)(a)(ii), to submit a plan to the division on or before May 15 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority and each local mental health authority, and each local substance abuse authority's contract provider, and each local mental health authority's contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:

(A) a substance use disorder;

(B) a mental health disorder; or

(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;
(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, that:

(A) establish training and certification requirements for a peer support specialist;

(B) specify the types of services a peer support specialist is qualified to provide;

(C) specify the type of supervision under which a peer support specialist is required to
operate; and

(D) specify continuing education and other requirements for maintaining or renewing
certification as a peer support specialist; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
Rulemaking Act, that:

(A) establish the requirements for a person to be certified to carry out, as needed, the
division's duty to train and certify an adult as a peer support specialist; and

(B) specify how the division shall provide oversight of a person certified to train and
certify a peer support specialist;

[(h)] (i) establish by rule, in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, minimum standards and requirements for the provision of
substance [abuse] use disorder and mental health treatment to [individuals] an individual who
[are] is required to participate in treatment by the court or the Board of Pardons and Parole, or
who [are] is incarcerated, including:

(i) collaboration with the Department of Corrections and the Utah Substance Use and
Mental Health Advisory Council to develop and coordinate the standards, including standards
for county and state programs serving individuals convicted of class A and class B
misdemeanors;

(ii) determining that the standards ensure available treatment [includes], including the
most current practices and procedures demonstrated by recognized scientific research to reduce
recidivism, including focus on the individual's criminal risk factors; and

(iii) requiring that all public and private treatment programs meet the standards
established under this Subsection (2)[(h)][(i) in order to receive public funds allocated to the
division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice
for the costs of providing screening, assessment, prevention, treatment, and recovery support;

[(i)] (j) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers who provide, as part of their practice, substance [abuse] use disorder and mental health treatment to [individuals] an individual involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance Use and Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(h)(i) for the treatment of [individuals] an individual involved in the criminal justice system; and

(iii) the requirement that [all] a public [and] or private [providers] provider of treatment to [individuals] an individual involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

[j] (k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed [for the reduced] to reduce recidivism [efforts];

(ii) county jail and county behavioral health early-assessment resources needed for [offenders] an offender convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

[k] (l) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(h)(i), including recidivism data and data regarding cost savings associated with recidivism reduction and the reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

[m] in [its] the division's discretion, use the data to make decisions regarding the
use of funds allocated to the division, the Administrative Office of the Courts, and the
Department of Corrections to provide treatment for which standards are established under
Subsection (2)[(h)][(i)]; and
[(m)] (n) annually, on or before August 31, submit the data collected under Subsection
(2)[(j)][(k)] to the Commission on Criminal and Juvenile Justice, which shall compile a report of
findings based on the data and provide the report to the [legislative] Judiciary Interim
Committee, the Health and Human Services Interim Committee, the Law Enforcement and
Criminal Justice Interim Committee, and the related appropriations subcommittees.

(3) (a) The division may refuse to contract with and may pursue [its] legal remedies
against any local substance abuse authority or local mental health authority that fails, or has
failed, to expend public funds in accordance with state law, division policy, contract
provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local
mental health authority if the authority's contract [with its] provider of substance abuse or
mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or
local mental health authority, the division shall review and determine whether the local
substance abuse authority or local mental health authority is complying with [its] the oversight
and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
liability described in Section 17-43-303 and to the responsibility and liability described in
Section 17-43-203.

(5) In carrying out [its] the division's duties and responsibilities, the division may not
duplicate treatment or educational facilities that exist in other divisions or departments of the
state, but shall work in conjunction with those divisions and departments in rendering the
treatment or educational services that those divisions and departments are competent and able
to provide.

(6) The division may accept in the name of and on behalf of the state donations, gifts,
devises, or bequests of real or personal property or services to be used as specified by the
donor.

(7) The division shall annually review with each local substance abuse authority and
each local mental health authority the authority's statutory and contract responsibilities regarding:

(a) [the] use of public funds;
(b) [the] oversight [responsibilities regarding] of public funds; and
(c) governance of substance [abuse] use disorder and mental health programs and services.

(8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

(a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
(b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

Section 2. Section 62A-15-602 is amended to read:


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, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:

(1) "Adult" means [a person] an individual 18 years of age or older.
(2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection 62A-15-103(2)(a)(v).
(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] where the adult resides or is found.
(4) "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.
"Designated examiner" means:

(a) 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

(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of 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.

"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.

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

"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 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.

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

"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.

"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.

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

"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, or a person that provides acute inpatient psychiatric services to a patient.

"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:

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

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

"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 an individual'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


"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.

"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.

(16) "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.

(17) "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.]

(18) "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 3. Section 62A-15-603 is amended to read:


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

(1) The division shall administer the state hospital as part of the state's comprehensive mental health program and, to the fullest extent possible, shall, as the state hospital's administrator, coordinate with local mental health authority programs.

(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 4. Section 62A-15-613 is amended to read:


(1) The director, with the [advice and consent of the board and the approval] consent 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 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 5. Section 62A-15-625 is amended to read:


[(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 6. Section 62A-15-627 is amended to read:

(1) A [voluntary] patient who is voluntarily admitted, as described in Section 462A-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,] a designee of the local mental health authority, or a mental health facility has cause to believe that release of the patient would be unsafe for the patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the [local mental health] admitting authority, [or its] the designee, or the 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]}

(2) The admitting authority, the designee, or the 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.

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

Section 7. Section 62A-15-628 is amended to read:


(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

(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 8. Section 62A-15-629 is amended to read:


(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;], due to mental illness, the adult 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 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 peace officer or mental health 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 peace officer's or mental health 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 peace officer's or
mental health 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
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 described in Subsection
62A-15-631(4); or

(b) the patient makes 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)(i), 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 described in 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 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;

(b) if an officer determines through the officer's experience and de-escalation training, that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, 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; and

(c) if an officer exercises discretion under Subsection 4(b) to not take an individual into protective custody or transport an individual, the officer shall document in the officer's report the details and circumstances that led to the officer's decision.

(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 9. Section 62A-15-631 is amended to read:

(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:

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

(i) name;

(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
the seven-day period immediately preceding the certification, the physician or designated
examiner [has] examined the [individual, and that the physician or designated examiner]
proposed patient and is of the opinion that the [individual is mentally ill] proposed patient has a
mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the [individual] proposed patient 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 the court
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) 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
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) 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]
proposed patient 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) 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 proposed
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) 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) 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) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the
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.]

(8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention or examination, the court shall appoint two designated examiners:

(a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);

(b) one of whom is a licensed physician; and

(c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.

(9) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.

(10) The designated examiners shall:

(a) conduct their examinations separately;

(b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;
(c) inform the proposed patient, if not represented by an attorney:

(i) that the proposed patient does not have to say anything;

(ii) of the nature and reasons for the examination;

(iii) that the examination was ordered by the court;

(iv) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment; and

(v) that findings resulting from the examination will be made available to the court;

and

(d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable programs available to the proposed patient without court proceedings. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.

(11) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.

(12) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, its designee, or the medical examiner shall immediately report that determination to the court.

(13) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient:

(a) is not mentally ill;

(b) has agreed to voluntary commitment, as described in Section 62A-15-625; or

(c) has acceptable options for treatment programs that are available without court proceedings.

[(9)(a)] (14) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment
of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or [was] is 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 proposed 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.

(i) A local mental health authority or its designee, or the physician in charge of the proposed 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 proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(f) The court shall order commitment of [an individual] a proposed patient 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 [(e)] (d).
the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(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 shelter, if allowed to remain at liberty];

(c) the proposed 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] proposed patient with treatment that is adequate and appropriate to the [individual's] proposed patient's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall [forthwith] dismiss the proceedings.

(17) (a) The order of commitment shall designate the period for which the [individual] patient shall be treated. When the [individual] patient 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 [(16)] 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] the discharge to the court.
Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through [(10)] (14).

(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) through [(10)] (14).

[(12) 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) (18) Any person patient 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) (19) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 10. 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 an individual is involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631[(10)](16), the conditions justifying commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection 62A-15-631[(11)](17) 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 11. Section 62A-15-635 is amended to read:


Whenever a patient has been temporarily, involuntarily committed to a local mental health authority on the application of any person other than the patient's legal guardian, spouse, or next of kin, the local mental health authority shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Section 12. Section 62A-15-637 is amended to read:


(1) A local mental health authority or a designee of a local mental health authority may release an improved patient to less restrictive treatment 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 a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the 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
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 had]
the patient agreed in writing.

(b) [That] An order for a more restrictive environment shall include the reasons
[therefor] for the order 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

(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)](16),
unless, by the time set for the hearing, the patient [has again been placed in] is returned to the
less restrictive environment[;] or the patient [has in writing withdrawn his] withdraws the
request for a hearing, in writing.

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

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

(i) make findings regarding whether the conditions described 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; and

[(4) (ii) [The order shall also] designate, by order, the environment for the patient's
care and the period for which the [individual] patient shall be treated, [in no event to] which
may not 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 13. 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] Section 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical 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(13);

(b) the child demonstrates 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) the child will benefit from care and treatment by the local mental health authority; and

(e) 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 petitioner, and a representative of the appropriate local mental health authority shall all:

(i) receive informal notice of the date and time of the proceeding; and

(ii) may appear and address the petition for commitment.

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

(d) The fact finder may allow a child to waive his 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;
(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:]

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(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 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] petition of 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, 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 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:
the less restrictive environment in which the child has been placed is exacerbating the child's mental illness or increasing the risk of harm to self or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating the child's mental illness or increasing the risk of harm to 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 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 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.

Section 14. Section 62A-15-705 is amended to read:


(1) (a) Subject to Subsection (1)(b), commitment proceedings for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.

(b) Commitment proceedings under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.

(2) The juvenile court shall order commitment to the physical custody of a local mental
health authority if, upon completion of the hearing and consideration of the record, it finds by
clear and convincing evidence that:

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

(b) the child demonstrates a risk of harm to himself or others;

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

(d) the child will benefit from the proposed care and treatment; and

(e) there is no appropriate less restrictive alternative.

(3) The local mental health authority has an affirmative duty to conduct periodic
reviews of children committed to its custody pursuant to this section, and to release any child
who has sufficiently improved so that the local mental health authority or its designee
determines that commitment is no longer appropriate.

Section 15. Repealer.

This bill repeals:

Section 62A-15-402, Rules for substance use disorder peer support specialist
training and certification.