

## SB0038S01 compared with SB0038

~~{deleted text}~~ shows text that was in SB0038 but was deleted in SB0038S01.

Inserted text shows text that was not in SB0038 but was inserted into SB0038S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

### MENTAL HEALTH AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

House Sponsor: ~~{\_\_\_\_\_}~~ Brad M. Daw

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#### LONG TITLE

~~{Committee Note:~~

~~\_\_\_\_\_The Health and Human Services Interim Committee recommended this bill.~~

~~}General Description:~~

This bill amends provisions of the civil commitment code and the definition of "unprofessional conduct" applied to mental health professionals.

#### Highlighted Provisions:

This bill:

- ▶ requires that a mental health professional provide a patient the opportunity to waive the patient's privacy rights;
- ▶ requires a designated examiner to consider a proposed patient's mental health history when evaluating the proposed patient for civil commitment;
- ▶ allows a designated examiner to request a court order to obtain a proposed patient's

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mental health history;

- ▶ requires a designated examiner to disclose to an unrepresented proposed patient the fact that the designated examiner may, by court order, obtain the proposed patient's mental health history;
- ▶ limits the circumstances under which a court may terminate a civil commitment; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**58-60-110**, as last amended by Laws of Utah 2001, Chapter 281

**62A-15-618**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

**[62A-15-626](#)**, as last amended by Laws of Utah 2008, Chapter 3

**62A-15-631**, as last amended by Laws of Utah 2018, Chapter 322

**62A-15-632**, as last amended by Laws of Utah 2018, Chapter 322

**62A-15-637**, as last amended by Laws of Utah 2018, Chapter 322

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

Section 1. Section **58-60-110** is amended to read:

**58-60-110. Unprofessional conduct.**

(1) As used in this chapter, "unprofessional conduct" includes:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;

(b) failure to confine practice conduct to those acts or practices:

(i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and

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(ii) which are within applicable scope of practice laws of this chapter; ~~[and]~~

(c) disclosing or refusing to disclose any confidential communication under Section 58-60-114 or 58-60-509[-]; and

(d) failure to offer a patient the opportunity to waive the patient's privacy rights under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164.

(2) "Unprofessional conduct" under this chapter may be further defined by division rule.

Section 2. Section **62A-15-618** is amended to read:

### **62A-15-618. Designated examiners.**

(1) A designated examiner shall consider a proposed patient's mental health history when evaluating a proposed patient.

(2) A designated examiner may request a court order to obtain a proposed patient's mental health records if a proposed patient refuses to share this information with the designated examiner.

(3) ~~[Designated examiners]~~ A designated examiner shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless ~~[they are]~~ the designated examiner is otherwise paid.

Section 3. Section 62A-15-626 is amended to read:

### **62A-15-626. Release from commitment.**

(1) (a) [A] Subject to Subsection (1)(b), a local mental health authority or [its] the mental health authority's designee shall release from commitment any [person] individual who, in the opinion of the local mental health authority or [its] the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.

(b) A local mental health authority's inability to locate a committed individual may not be the basis for the individual's release, unless the court orders the release of the individual after a hearing.

(2) A local mental health authority or [its] the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 78A-6-120, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be

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provided.

(3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 62A-15-636 and 62A-15-637.

Section ~~33~~4. 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) A responsible [~~person~~] individual who has reason to know of an adult's mental illness and the condition or circumstances that have led 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 proposed patient's:

- (i) name;
- (ii) date of birth; and
- (iii) social security number; and

(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 examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the 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):

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- (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 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.

(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 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 a local mental health authority may be commenced 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.

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(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

(vi) that the designated examiner may, under court order, obtain the proposed patient's mental health records; 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.

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(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.

(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 is found.

(15) (a) 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.

(b) 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.

(c) 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.

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(d) 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.

(e) (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.

(16) The court shall order commitment of 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 (15)(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 to self or others;
- (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 proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall dismiss the proceedings.

(17) (a) The order of commitment shall designate the period for which the patient shall



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be treated. When the 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 the discharge to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (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 (14).

(18) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court

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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.

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

Section ~~{4}~~5. 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(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(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.], unless:

(a) the court terminates the civil commitment through a review hearing; or

(b) the local mental health authority or a designee of the local mental health authority with custody over the patient discharges the patient and provides notice of the discharge to the court, as described in Subsections 62A-15-631(17)(c) and 62A-15-637(2).

(2) A patient whose treatment is continued or who is conditionally released under [~~the terms of this section;~~] Section 62A-15-637 shall be maintained in the least restrictive environment available that can provide the patient with the treatment that is adequate and appropriate.

(3) Except for good cause, a court may not terminate a civil commitment through a review hearing if the patient:

(a) is under a conditional release agreement; and

(b) does not appear at the review hearing.

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Section ~~5~~6. 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 a designee of a local mental health authority may conditionally release an improved patient to less restrictive treatment when:

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

(2) (a) 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.

(b) If the discharged patient has been committed through judicial proceedings, 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.

(3) (a) A local mental health authority or a designee of a local mental health authority is authorized to issue an order for the immediate placement of a current patient into a more restrictive environment, if:

(i) the local mental health authority or a designee of a local mental health authority has reason to believe that the patient's current environment is aggravating the patient's mental illness; or

(ii) the patient has failed to comply with the specified treatment plan to which the patient agreed in writing.

(b) An order for a more restrictive environment shall [~~include~~]:

(i) state the reasons for the order [~~and shall~~];

(ii) authorize any peace officer to take the patient into physical custody and transport the patient to a facility designated by the local mental health authority[~~;~~];

(iii) inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures described in Subsection 62A-15-631(14); and

(iv) [~~Prior~~] prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued conditional release from inpatient care, copies of the order shall be [~~personally~~] delivered to:

(A) the patient [~~and sent to~~];

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(B) the person in whose care the patient is placed ~~[The order shall also be sent to];~~

(C) the patient's counsel of record; and ~~[to]~~

(D) 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(14).]~~

(c) If the patient 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 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(16), unless, by the time set for the hearing, the patient is returned to the less restrictive environment or the patient withdraws the request for a hearing, in writing.

(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

(ii) designate, by order, the environment for the patient's care and the period for which the patient shall be treated, which may not extend beyond expiration of the original order of commitment.

(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.