

CIVIL COMMITMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes concerning involuntary commitment and assisted outpatient treatment.

Highlighted Provisions:

This bill:

- ▶ allows a patient to provide an informed waiver to a court regarding the patient's appearance at a hearing;
- ▶ sets requirements for when a court may involuntarily commit a person originally ordered to assisted outpatient treatment; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-630.5, as enacted by Laws of Utah 2019, Chapter 256

62A-15-631, as last amended by Laws of Utah 2019, Chapters 256 and 419

REPEALS AND REENACTS:

62A-15-632, as last amended by Laws of Utah 2019, Chapter 419



28

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

30 Section 1. Section **62A-15-630.5** is amended to read:

31 **62A-15-630.5. Assisted outpatient treatment proceedings.**

32 (1) A responsible individual who has credible knowledge of an adult's mental illness
33 and the condition or circumstances that have led to the adult's need for assisted outpatient
34 treatment may file, in the district court in the county where the proposed patient resides or is
35 found, a written application that includes:

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

38 (i) name;

39 (ii) date of birth; and

40 (iii) social security number; and

41 (b) (i) a certificate of a licensed physician or a designated examiner stating that within
42 the seven-day period immediately preceding the certification, the physician or designated
43 examiner examined the proposed patient and is of the opinion that the proposed patient has a
44 mental illness and should be involuntarily committed; or

45 (ii) a written statement by the applicant that:

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

48 (B) is sworn to under oath; and

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

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

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

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

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

57 (3) If the proposed patient refuses to submit to an interview described in Subsection

58 (2)(a) or an examination described in Subsection (8), the court may issue an order, directed to a

59 mental health officer or peace officer, to immediately place the proposed patient into the
60 custody of a local mental health authority or in a temporary emergency facility, as provided in
61 Section 62A-15-634, to be detained for the purpose of examination.

62 (4) Notice of commencement of proceedings for assisted outpatient treatment, setting
63 forth the allegations of the application and any reported facts, together with a copy of any
64 official order of detention, shall:

65 (a) be provided by the court to a proposed patient before, or upon, placement into the
66 custody of a local mental health authority or, with respect to any proposed patient presently in
67 the custody of a local mental health authority;

68 (b) be maintained at the proposed patient's place of detention, if any;

69 (c) be provided by the court as soon as practicable to the applicant, any legal guardian,
70 any immediate adult family members, legal counsel for the parties involved, the local mental
71 health authority or its designee, and any other person whom the proposed patient or the court
72 shall designate; and

73 (d) advise that a hearing may be held within the time provided by law.

74 (5) The district court may, in its discretion, transfer the case to any other district court
75 within this state, provided that the transfer will not be adverse to the interest of the proposed
76 patient.

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

81 (a) who did not sign the assisted outpatient treatment application nor the certification
82 described in Subsection (1);

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

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

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

88 (8) The designated examiners shall:

89 (a) conduct their examinations separately;

90 (b) conduct the examinations at the home of the proposed patient, at a hospital or other
91 medical facility, or at any other suitable place that is not likely to have a harmful effect on the
92 proposed patient's health;

93 (c) inform the proposed patient, if not represented by an attorney:

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

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

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

97 (iv) that any information volunteered could form part of the basis for the proposed

98 patient to be ordered to receive assisted outpatient treatment; and

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

100 and

101 (d) within 24 hours of examining the proposed patient, report to the court, orally or in
102 writing, whether the proposed patient is mentally ill. If the designated examiner reports orally,
103 the designated examiner shall immediately send a written report to the clerk of the court.

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

107 (10) If the local mental health authority, its designee, or a medical examiner determines
108 before the court hearing that the conditions justifying the findings leading to an assisted
109 outpatient treatment hearing no longer exist, the local mental health authority, its designee, or
110 the medical examiner shall immediately report that determination to the court.

111 (11) The court may terminate the proceedings and dismiss the application at any time,
112 including prior to the hearing, if the designated examiners or the local mental health authority
113 or its designee informs the court that the proposed patient [~~is not mentally ill~~] does not meet the
114 criteria in Subsection (14).

115 (12) Before the hearing, an opportunity to be represented by counsel shall be afforded
116 to the proposed patient, and if neither the proposed patient nor others provide counsel, the court
117 shall appoint counsel and allow counsel sufficient time to consult with the proposed patient
118 before the hearing. In the case of an indigent proposed patient, the payment of reasonable
119 attorney fees for counsel, as determined by the court, shall be made by the county in which the
120 proposed patient resides or is found.

121 (13) (a) All persons to whom notice is required to be given shall be afforded an
122 opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The
123 court may, in its discretion, receive the testimony of any other individual. The court may allow
124 a waiver of the proposed patient's right to appear [~~only~~] for good cause [~~shown, and that cause~~
125 ~~shall be made a matter of court record~~], which cause shall be set forth in the record, or an
126 informed waiver by the patient, which shall be included in the record.

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

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

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

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

139 (A) the detention order, if any;

140 (B) admission notes, if any;

141 (C) the diagnosis, if any;

142 (D) doctor's orders, if any;

143 (E) progress notes, if any;

144 (F) nursing notes, if any; and

145 (G) medication records, if any.

146 (ii) The information described in Subsection (13)(e)(i) shall also be provided to the
147 proposed patient's counsel:

148 (A) at the time of the hearing; and

149 (B) at any time prior to the hearing, upon request.

150 (14) The court shall order a proposed patient to assisted outpatient treatment if, upon
151 completion of the hearing and consideration of the information presented, the court finds by

152 clear and convincing evidence that:

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

154 (b) there is no appropriate less-restrictive alternative to a court order for assisted
155 outpatient treatment; and

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

159 (ii) the proposed patient needs assisted outpatient treatment in order to prevent relapse
160 or deterioration that is likely to result in the proposed patient posing a substantial danger to self
161 or others.

162 (15) The court may order the applicant or a close relative of the patient to be the
163 patient's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the
164 patient's mental health treatment.

165 (16) In the absence of the findings described in Subsection (14), the court, after the
166 hearing, shall dismiss the proceedings.

167 (17) (a) The assisted outpatient treatment order shall designate the period for which the
168 patient shall be treated, which may not exceed ~~[six]~~ 12 months without a review hearing.

169 ~~[(b) An individual identified under Subsection (4) may request a review hearing at any
170 time while the assisted outpatient treatment order is in effect.]~~

171 ~~[(c)]~~ (b) At a review hearing, the court may extend the duration of an assisted
172 outpatient treatment order by up to ~~[six]~~ 12 months, if:

173 (i) the court finds by clear and convincing evidence that the patient meets the
174 conditions described in Subsection (14); or

175 (ii) (A) the patient does not appear at the review hearing; ~~[and]~~

176 (B) notice of the review hearing was provided to the patient's last known address at
177 least seven days, but not more than 21 days, prior to the review hearing by the applicant
178 described in Subsection (1) or by a local mental health authority~~[-];~~ and

179 (C) the patient has appeared in court or signed an informed waiver within the previous
180 18 months.

181 ~~[(d)]~~ (c) The court shall maintain a current list of all patients under its order of assisted
182 outpatient treatment.

183 ~~[(e)]~~ (d) At least two weeks prior to the expiration of the designated period of any
 184 assisted outpatient treatment order still in effect, the court that entered the original order shall
 185 inform the appropriate local mental health authority or its designee.

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

188 (19) A court may not hold an individual in contempt for failure to comply with an
 189 assisted outpatient treatment order.

190 (20) As provided in Section 31A-22-651, a health insurance provider may not deny an
 191 insured the benefits of the insured's policy solely because the health care that the insured
 192 receives is provided under a court order for assisted outpatient treatment.

193 Section 2. Section 62A-15-631 is amended to read:

194 **62A-15-631. Involuntary commitment under court order -- Examination --**
 195 **Hearing -- Power of court -- Findings required -- Costs.**

196 (1) A responsible individual who has credible knowledge of an adult's mental illness
 197 and the condition or circumstances that have led to the adult's need to be involuntarily
 198 committed may initiate an involuntary commitment court proceeding by filing, in the district
 199 court in the county where the proposed patient resides or is found, a written application that
 200 includes:

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

203 (i) name;

204 (ii) date of birth; and

205 (iii) social security number;

206 (b) (i) a certificate of a licensed physician or a designated examiner stating that within
 207 the seven-day period immediately preceding the certification, the physician or designated
 208 examiner examined the proposed patient and is of the opinion that the proposed patient has a
 209 mental illness and should be involuntarily committed; or

210 (ii) a written statement by the applicant that:

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

213 (B) is sworn to under oath; and

214 (C) states the facts upon which the application is based; and

215 (c) a statement whether the proposed patient has previously been under an assisted
216 outpatient treatment order, if known by the applicant.

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

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

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

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

224 (3) If the court finds from the application, from any other statements under oath, or
225 from any reports from a mental health professional that there is a reasonable basis to believe
226 that the proposed patient has a mental illness that poses a substantial danger to self or others
227 requiring involuntary commitment pending examination and hearing; or, if the proposed patient
228 has refused to submit to an interview with a mental health professional as directed by the court
229 or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental
230 health officer or peace officer, to immediately place the proposed patient in the custody of a
231 local mental health authority or in a temporary emergency facility as provided in Section
232 [62A-15-634](#) to be detained for the purpose of examination.

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

240 (5) Notice of commencement of those proceedings shall be provided by the court as
241 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
242 legal counsel for the parties involved, the local mental health authority or its designee, and any
243 other persons whom the proposed patient or the court shall designate. That notice shall advise
244 those persons that a hearing may be held within the time provided by law. If the proposed

245 patient has refused to permit release of information necessary for provisions of notice under
246 this subsection, the extent of notice shall be determined by the court.

247 (6) Proceedings for commitment of an individual under the age of 18 years to a local
248 mental health authority may be commenced in accordance with Part 7, Commitment of Persons
249 Under Age 18 to Division of Substance Abuse and Mental Health.

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

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

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

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

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

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

264 (10) The designated examiners shall:

265 (a) conduct their examinations separately;

266 (b) conduct the examinations at the home of the proposed patient, at a hospital or other
267 medical facility, or at any other suitable place that is not likely to have a harmful effect on the
268 proposed patient's health;

269 (c) inform the proposed patient, if not represented by an attorney:

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

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

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

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

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

276 and

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

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

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

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

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

294 (a) ~~[is not mentally ill]~~ does not meet the criteria in Subsection (16);

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

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

298 (14) Before the hearing, an opportunity to be represented by counsel shall be afforded
299 to the proposed patient, and if neither the proposed patient nor others provide counsel, the court
300 shall appoint counsel and allow counsel sufficient time to consult with the proposed patient
301 before the hearing. In the case of an indigent proposed patient, the payment of reasonable
302 attorney fees for counsel, as determined by the court, shall be made by the county in which the
303 proposed patient resides or is found.

304 (15) (a) The proposed patient, the applicant, and all other persons to whom notice is
305 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to
306 present and cross-examine witnesses. The court may, in its discretion, receive the testimony of

307 any other person. The court may allow a waiver of the proposed patient's right to appear [~~only~~]
308 for good cause [~~shown, and that cause shall be made a matter of court record~~], which cause
309 shall be set forth in the record, or an informed waiver by the patient, which shall be included in
310 the record.

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

314 (c) The hearing shall be conducted in as informal a manner as may be consistent with
315 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
316 mental health of the proposed patient, while preserving the due process rights of the proposed
317 patient.

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

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

324 (A) the detention order;

325 (B) admission notes;

326 (C) the diagnosis;

327 (D) any doctors' orders;

328 (E) progress notes;

329 (F) nursing notes;

330 (G) medication records pertaining to the current commitment; and

331 (H) whether the proposed patient has previously been civilly committed or under an
332 order for assisted outpatient treatment.

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

335 (16) The court shall order commitment of a proposed patient who is 18 years of age or
336 older to a local mental health authority if, upon completion of the hearing and consideration of
337 the information presented, the court finds by clear and convincing evidence that:

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

339 (b) because of the proposed patient's mental illness the proposed patient poses a
340 substantial danger to self or others;

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

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

346 (e) the local mental health authority can provide the proposed patient with treatment
347 that is adequate and appropriate to the proposed patient's conditions and needs. In the absence
348 of the required findings of the court after the hearing, the court shall dismiss the proceedings.

349 (17) (a) The order of commitment shall designate the period for which the patient shall
350 be treated. When the patient is not under an order of commitment at the time of the hearing,
351 that period may not exceed six months without benefit of a review hearing. Upon such a review
352 hearing, to be commenced prior to the expiration of the previous order, an order for
353 commitment may be for an indeterminate period, if the court finds by clear and convincing
354 evidence that the required conditions in Subsection (16) will last for an indeterminate period.

355 (b) The court shall maintain a current list of all patients under its order of commitment.
356 That list shall be reviewed to determine those patients who have been under an order of
357 commitment for the designated period. At least two weeks prior to the expiration of the
358 designated period of any order of commitment still in effect, the court that entered the original
359 order shall inform the appropriate local mental health authority or its designee. The local
360 mental health authority or its designee shall immediately reexamine the reasons upon which the
361 order of commitment was based. If the local mental health authority or its designee determines
362 that the conditions justifying that commitment no longer exist, it shall discharge the patient
363 from involuntary commitment and immediately report the discharge to the court. Otherwise,
364 the court shall immediately appoint two designated examiners and proceed under Subsections
365 (8) through (14).

366 (c) The local mental health authority or its designee responsible for the care of a patient
367 under an order of commitment for an indeterminate period shall, at six-month intervals,
368 reexamine the reasons upon which the order of indeterminate commitment was based. If the

369 local mental health authority or its designee determines that the conditions justifying that
370 commitment no longer exist, that local mental health authority or its designee shall discharge
371 the patient from its custody and immediately report the discharge to the court. If the local
372 mental health authority or its designee determines that the conditions justifying that
373 commitment continue to exist, the local mental health authority or its designee shall send a
374 written report of those findings to the court. The patient and the patient's counsel of record
375 shall be notified in writing that the involuntary commitment will be continued, the reasons for
376 that decision, and that the patient has the right to a review hearing by making a request to the
377 court. Upon receiving the request, the court shall immediately appoint two designated
378 examiners and proceed under Subsections (8) through (14).

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

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

388 Section 3. Section [62A-15-632](#) is repealed and reenacted to read:

389 **[62A-15-632](#). Circumstances under which conditions justifying initial involuntary
390 commitment shall be considered to continue to exist.**

391 (1) When an individual is involuntarily committed to the custody of a local mental
392 health authority under Subsection [62A-15-631](#)(16), the conditions justifying commitment
393 under that Subsection shall be considered to continue to exist for purposes of continued
394 treatment under Subsection [62A-15-631](#)(17) or conditional release under Section [62A-15-637](#)
395 if the court finds that:

396 (a) the patient is still mentally ill;

397 (b) there is no appropriate less restrictive alternative to a court order of involuntary
398 commitment; and

399 (c) absent an order of involuntary commitment, the patient will likely pose a substantial

400 danger to self or others.

401 (2) When an individual has been ordered to assisted outpatient treatment under
402 Subsection 62A-15-630.5(14), the individual may be involuntarily committed to the custody of
403 a local mental health authority under Subsection 62A-15-631(16) for purposes of continued
404 treatment under Subsection 62A-15-631(17) or conditional release under Section 62A-15-637,
405 if the court finds that:

406 (a) the patient is still mentally ill;

407 (b) there is no appropriate less-restrictive alternative to a court order of involuntary
408 commitment; and

409 (c) based upon the patient's conduct and statements during the preceding six months, or
410 the patient's failure to comply with treatment recommendations during the preceding six
411 months, the court finds that absent an order of involuntary commitment, the patient is likely to
412 pose a substantial danger to self or others.

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