

Representative Nelson T. Abbott proposes the following substitute bill:

CIVIL COMMITMENT EXAMINER REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill amends provisions related to designated examiners.

Highlighted Provisions:

This bill:

- ▶ related to civil commitments, adds certain psychiatric mental health nurse practitioners and psychiatric mental health clinical nurse specialists to the use of the term "designated examiner"; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-631, as last amended by Laws of Utah 2022, Chapter 374

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

Section 1. Section **62A-15-631** is amended to read:



26 **62A-15-631. Involuntary commitment under court order -- Examination --**
27 **Hearing -- Power of court -- Findings required -- Costs.**

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

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

35 (i) name;

36 (ii) date of birth; and

37 (iii) social security number;

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

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

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

45 (B) is sworn to under oath; and

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

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

49 (2) Before issuing a judicial order, the court:

50 (a) shall require the applicant to consult with the appropriate local mental health
51 authority at or before the hearing; and

52 (b) may direct a mental health professional from the local mental health authority to
53 interview the applicant and the proposed patient to determine the existing facts and report the
54 existing facts to the court.

55 (3) The court may issue an order, directed to a mental health officer or peace officer, to
56 immediately place a proposed patient in the custody of a local mental health authority or in a

57 temporary emergency facility, as described in Section 62A-15-634, to be detained for the
58 purpose of examination if:

59 (a) the court finds from the application, any other statements under oath, or any reports
60 from a mental health professional that there is a reasonable basis to believe that the proposed
61 patient has a mental illness that poses a danger to self or others and requires involuntary
62 commitment pending examination and hearing; or

63 (b) the proposed patient refuses to submit to an interview with a mental health
64 professional as directed by the court or to go to a treatment facility voluntarily.

65 (4) (a) The court shall provide notice of commencement of proceedings for involuntary
66 commitment, setting forth the allegations of the application and any reported facts, together
67 with a copy of any official order of detention, to a proposed patient before, or upon, placement
68 of the proposed patient in the custody of a local mental health authority or, with respect to any
69 proposed patient presently in the custody of a local mental health authority whose status is
70 being changed from voluntary to involuntary, upon the filing of an application for that purpose
71 with the court.

72 (b) The place of detention shall maintain a copy of the order of detention.

73 (5) (a) The court shall provide notice of commencement of proceedings for involuntary
74 commitment as soon as practicable to the applicant, any legal guardian, any immediate adult
75 family members, legal counsel for the parties involved, the local mental health authority or the
76 local mental health authority's designee, and any other persons whom the proposed patient or
77 the court designates.

78 (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall
79 advise the persons that a hearing may be held within the time provided by law.

80 (c) If the proposed patient refuses to permit release of information necessary for
81 provisions of notice under this subsection, the court shall determine the extent of notice.

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

85 (7) (a) The district court may, in the district court's discretion, transfer the case to any
86 other district court within this state, if the transfer will not be adverse to the interest of the
87 proposed patient.

88 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be
89 transferred and the local mental health authority may be substituted in accordance with Utah
90 Rules of Civil Procedure, Rule 25.

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

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

97 (b) one of whom is:

98 (i) a licensed physician; or

99 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health clinical
100 nurse specialist who:

101 (A) is nationally certified;

102 (B) is doctorally trained; and

103 (C) has at least two years of inpatient mental health experience, regardless of the
104 license the individual held at the time of that experience; and

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

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

109 (10) (a) The designated examiners shall:

110 (i) conduct the examinations separately;

111 (ii) conduct the examinations at the home of the proposed patient, at a hospital or other
112 medical facility, or at any other suitable place, including through telehealth, that is not likely to
113 have a harmful effect on the proposed patient's health;

114 (iii) inform the proposed patient, if not represented by an attorney:

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

116 (B) of the nature and reasons for the examination;

117 (C) that the examination was ordered by the court;

118 (D) that any information volunteered could form part of the basis for the proposed

119 patient's involuntary commitment;

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

121 and

122 (F) that the designated examiner may, under court order, obtain the proposed patient's
123 mental health records; and

124 (iv) within 24 hours of examining the proposed patient, report to the court, orally or in
125 writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as
126 described in Section 62A-15-625, or has acceptable programs available to the proposed patient
127 without court proceedings.

128 (b) If a designated examiner reports orally under Subsection (10)(a), the designated
129 examiner shall immediately send a written report to the clerk of the court.

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

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

138 (13) The court may terminate the proceedings and dismiss the application at any time,
139 including before the hearing, if the designated examiners or the local mental health authority or
140 the local mental health authority's designee informs the court that the proposed patient:

141 (a) does not meet the criteria in Subsection (16);

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

143 (c) has acceptable options for treatment programs that are available without court
144 proceedings; or

145 (d) meets the criteria for assisted outpatient treatment described in Section
146 62A-15-630.5.

147 (14) (a) Before the hearing, the court shall provide the proposed patient an opportunity
148 to be represented by counsel, and if neither the proposed patient nor others provide counsel, the
149 court shall appoint counsel and allow counsel sufficient time to consult with the proposed

150 patient before the hearing.

151 (b) In the case of an indigent proposed patient, the county in which the proposed
152 patient resides or is found shall make payment of reasonable attorney fees for counsel, as
153 determined by the court.

154 (15) (a) (i) The court shall afford the proposed patient, the applicant, and any other
155 person to whom notice is required to be given an opportunity to appear at the hearing, to
156 testify, and to present and cross-examine witnesses.

157 (ii) The court may, in the court's discretion, receive the testimony of any other person.

158 (iii) The court may allow a waiver of the proposed patient's right to appear for good
159 cause, which cause shall be set forth in the record, or an informed waiver by the patient, which
160 shall be included in the record.

161 (b) The court is authorized to exclude any person not necessary for the conduct of the
162 proceedings and may, upon motion of counsel, require the testimony of each designated
163 examiner to be given out of the presence of any other designated examiners.

164 (c) The court shall conduct the hearing in as informal a manner as may be consistent
165 with orderly procedure, and in a physical setting that is not likely to have a harmful effect on
166 the mental health of the proposed patient, while preserving the due process rights of the
167 proposed patient.

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

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

174 (A) the detention order;

175 (B) admission notes;

176 (C) the diagnosis;

177 (D) any doctors' orders;

178 (E) progress notes;

179 (F) nursing notes;

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

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

183 (ii) The information described in Subsection (15)(e)(i) shall also be supplied to the
184 proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon
185 request.

186 (16) (a) The court shall order commitment of an adult proposed patient to a local
187 mental health authority if, upon completion of the hearing and consideration of the information
188 presented, the court finds by clear and convincing evidence that:

189 (i) the proposed patient has a mental illness;

190 (ii) because of the proposed patient's mental illness the proposed patient poses a
191 substantial danger to self or others;

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

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

197 (v) the local mental health authority can provide the proposed patient with treatment
198 that is adequate and appropriate to the proposed patient's conditions and needs.

199 (b) (i) If, at the hearing, the court determines that the proposed patient has a mental
200 illness but does not meet the other criteria described in Subsection (16)(a), the court may
201 consider whether the proposed patient meets the criteria for assisted outpatient treatment under
202 Section [62A-15-630.5](#).

203 (ii) The court may order the proposed patient to receive assisted outpatient treatment in
204 accordance with Section [62A-15-630.5](#) if, at the hearing, the court finds the proposed patient
205 meets the criteria for assisted outpatient treatment under Section [62A-15-630.5](#).

206 (iii) If the court determines that neither the criteria for commitment under Subsection
207 (16)(a) nor the criteria for assisted outpatient treatment under Section [62A-15-630.5](#) are met,
208 the court shall dismiss the proceedings after the hearing.

209 (17) (a) (i) The order of commitment shall designate the period for which the patient
210 shall be treated.

211 (ii) If the patient is not under an order of commitment at the time of the hearing, the

212 patient's treatment period may not exceed six months without a review hearing.

213 (iii) Upon a review hearing, to be commenced before the expiration of the previous
214 order of commitment, an order for commitment may be for an indeterminate period, if the court
215 finds by clear and convincing evidence that the criteria described in Subsection (16) will last
216 for an indeterminate period.

217 (b) (i) The court shall maintain a current list of all patients under the court's order of
218 commitment and review the list to determine those patients who have been under an order of
219 commitment for the court designated period.

220 (ii) At least two weeks before the expiration of the designated period of any order of
221 commitment still in effect, the court that entered the original order of commitment shall inform
222 the appropriate local mental health authority or the local mental health authority's designee of
223 the expiration.

224 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
225 mental health authority or the local mental health authority's designee shall immediately
226 reexamine the reasons upon which the order of commitment was based.

227 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
228 authority or the local mental health authority's designee determines that the conditions
229 justifying commitment no longer exist, the local mental health authority or the local mental
230 health authority's designee shall discharge the patient from involuntary commitment and
231 immediately report the discharge to the court.

232 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
233 authority or the local mental health authority's designee determines that the conditions
234 justifying commitment continue to exist, the court shall immediately appoint two designated
235 examiners and proceed under Subsections (8) through (14).

236 (c) (i) The local mental health authority or the local mental health authority's designee
237 responsible for the care of a patient under an order of commitment for an indeterminate period
238 shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate
239 commitment was based.

240 (ii) If the local mental health authority or the local mental health authority's designee
241 determines that the conditions justifying commitment no longer exist, the local mental health
242 authority or the local mental health authority's designee shall discharge the patient from the

243 local mental health authority's or the local mental health authority designee's custody and
244 immediately report the discharge to the court.

245 (iii) If the local mental health authority or the local mental health authority's designee
246 determines that the conditions justifying commitment continue to exist, the local mental health
247 authority or the local mental health authority's designee shall send a written report of the
248 findings to the court.

249 (iv) A patient and the patient's counsel of record shall be notified in writing that the
250 involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the
251 decision to continue, and that the patient has the right to a review hearing by making a request
252 to the court.

253 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately
254 appoint two designated examiners and proceed under Subsections (8) through (14).

255 (18) (a) Any patient committed as a result of an original hearing or a patient's legally
256 designated representative who is aggrieved by the findings, conclusions, and order of the court
257 entered in the original hearing has the right to a new hearing upon a petition filed with the court
258 within 30 days after the day on which the court order is entered.

259 (b) The petition shall allege error or mistake in the findings, in which case the court
260 shall appoint three impartial designated examiners previously unrelated to the case to conduct
261 an additional examination of the patient.

262 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
263 conduct the new hearing in the manner otherwise permitted.

264 (19) The county in which the proposed patient resides or is found shall pay the costs of
265 all proceedings under this section.