

CIVIL COMMITMENT EXAMINER REQUIREMENTS

2024 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:

26B-5-332, as renumbered and amended by Laws of Utah 2023, Chapter 308

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

Section 1. Section **26B-5-332** is amended to read:

26B-5-332. Involuntary commitment under court order -- Examination -- 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 court in
31 the county where the proposed patient resides or is found, a written application that includes:

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

34 (i) name;

35 (ii) date of birth; and

36 (iii) social security number;

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

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

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

44 (B) is sworn to under oath; and

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

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

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

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

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

54 (3) The court may issue an order, directed to a mental health officer or peace officer, to
55 immediately place a proposed patient in the custody of a local mental health authority or in a
56 temporary emergency facility, as described in Section [26B-5-334](#), to be detained for the
57 purpose of examination if:

58 (a) the court finds from the application, any other statements under oath, or any reports

59 from a mental health professional that there is a reasonable basis to believe that the proposed
60 patient has a mental illness that poses a danger to self or others and requires involuntary
61 commitment pending examination and hearing; or

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

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

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

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

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

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

81 (6) Proceedings for commitment of an individual under 18 years old to a local mental
82 health authority may be commenced in accordance with Part 4, Commitment of Persons Under
83 Age 18.

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

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

89 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance

90 of a judicial order, or after commitment of a proposed patient to a local mental health authority
91 or the local mental health authority's designee under court order for detention or examination,
92 the court shall appoint two designated examiners:

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

95 (b) one of whom is;

96 (i) a licensed physician; or

97 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health clinical
98 nurse specialist who:

99 (A) is nationally certified;

100 (B) is doctorally trained; and

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

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

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

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

108 (i) conduct the examinations separately;

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

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

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

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

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

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

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

119 and

120 (F) that the designated examiner may, under court order, obtain the proposed patient's

121 mental health records; and

122 (iv) within 24 hours of examining the proposed patient, report to the court, orally or in
123 writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as
124 described in Section 26B-5-360, or has acceptable programs available to the proposed patient
125 without court proceedings.

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

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

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

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

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

140 (b) has agreed to voluntary commitment, as described in Section 26B-5-360;

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

143 (d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.

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

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

151 (15) (a) (i) The court shall afford the proposed patient, the applicant, and any other

152 person to whom notice is required to be given an opportunity to appear at the hearing, to
153 testify, and to present and cross-examine witnesses.

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

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

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

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

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

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

171 (A) the detention order;

172 (B) admission notes;

173 (C) the diagnosis;

174 (D) any doctors' orders;

175 (E) progress notes;

176 (F) nursing notes;

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

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

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

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

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

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

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

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

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

196 (b) (i) If, at the hearing, the court determines that the proposed patient has a mental
197 illness but does not meet the other criteria described in Subsection (16)(a), the court may
198 consider whether the proposed patient meets the criteria for assisted outpatient treatment under
199 Section [26B-5-351](#).

200 (ii) The court may order the proposed patient to receive assisted outpatient treatment in
201 accordance with Section [26B-5-351](#) if, at the hearing, the court finds the proposed patient
202 meets the criteria for assisted outpatient treatment under Section [26B-5-351](#).

203 (iii) If the court determines that neither the criteria for commitment under Subsection
204 (16)(a) nor the criteria for assisted outpatient treatment under Section [26B-5-351](#) are met, the
205 court shall dismiss the proceedings after the hearing.

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

208 (ii) If the patient is not under an order of commitment at the time of the hearing, the
209 patient's treatment period may not exceed six months without a review hearing.

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

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

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

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

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

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

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

237 (ii) If the local mental health authority or the local mental health authority's designee
238 determines that the conditions justifying commitment no longer exist, the local mental health
239 authority or the local mental health authority's designee shall discharge the patient from the
240 local mental health authority's or the local mental health authority designee's custody and
241 immediately report the discharge to the court.

242 (iii) If the local mental health authority or the local mental health authority's designee
243 determines that the conditions justifying commitment continue to exist, the local mental health
244 authority or the local mental health authority's designee shall send a written report of the

245 findings to the court.

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

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

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

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

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

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

263 Section 2. **Effective date.**

264 This bill takes effect on May 1, 2024.