

CIVIL COMMITMENT HEARINGS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

LONG TITLE**General Description:**

This bill amends the procedures related to involuntary commitment.

Highlighted Provisions:

This bill:

- changes the timeframe for when the court must consider civil commitment proceedings from 10 days to five days.

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**26B-6-608**, 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.**

(1) A responsible individual who has credible knowledge 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 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;

(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; and

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

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

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

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

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

(a) the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed

59 patient has a mental illness that poses a danger to self or others and requires involuntary
60 commitment pending examination and hearing; or

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

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

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

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

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

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

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

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

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

88 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance
89 of a judicial order, or after commitment of a proposed patient to a local mental health authority

or the local mental health authority's 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]~~ five calendar days after the day on which the designated examiners are appointed.

(10) (a) The designated examiners shall:

(i) conduct the examinations separately;

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

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

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

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

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

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

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

and

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

(iv) 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 [26B-5-360](#), or has acceptable programs available to the proposed patient without court proceedings.

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

(11) If a designated examiner is unable to complete an examination on the first attempt

because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.

(12) If the local mental health authority, the local mental health authority's 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, the local mental health authority's designee, or the medical examiner shall immediately report the determination to the court.

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

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

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

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

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

(14) (a) Before the hearing, the court shall provide the proposed patient an opportunity to be represented by counsel, 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.

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

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

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

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

(b) The court is authorized to exclude any person not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each designated

examiner to be given out of the presence of any other designated examiners.

(c) The court shall conduct the hearing 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, while preserving the due process rights of the proposed patient.

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

(e) (i) A local mental health authority or the local mental health authority's 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;

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

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

(ii) The information described in Subsection (15)(e)(i) 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) (a) The court shall order commitment of an adult proposed patient to a local mental health authority if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:

(i) the proposed patient has a mental illness;

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

(iii) 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;

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

(v) 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.

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

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

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

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

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

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

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

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

(iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local

214 mental health authority or the local mental health authority's designee shall immediately
215 reexamine the reasons upon which the order of commitment was based.

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

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

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

229 (ii) If the local mental health authority or the local mental health authority's designee
230 determines that the conditions justifying commitment no longer exist, the local mental health
231 authority or the local mental health authority's designee shall discharge the patient from the
232 local mental health authority's or the local mental health authority designee's custody and
233 immediately report the discharge to the court.

234 (iii) If the local mental health authority or the local mental health authority's designee
235 determines that the conditions justifying commitment continue to exist, the local mental health
236 authority or the local mental health authority's designee shall send a written report of the
237 findings to the court.

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

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

244 (18) (a) 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 entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days after the day on which the court order is entered.

(b) The petition shall 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.

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

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

Section 2. Section **26B-6-608** is amended to read:

26B-6-608. Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.

(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years old with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:

(a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or

(b) a written statement by the petitioner that:

(i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;

276 (ii) is under oath; and

277 (iii) sets forth the facts on which the statement is based.

278 (2) Before issuing a detention order, the court may require the petitioner to consult
279 with personnel at the division or at an intermediate care facility for people with an intellectual
280 disability and may direct a designated intellectual disability professional to interview the
281 petitioner and the individual to be committed, to determine the existing facts, and to report
282 them to the court.

283 (3) The court may issue a detention order and may direct a peace officer to immediately
284 take the individual to an intermediate care facility for people with an intellectual disability to
285 be detained for purposes of an examination if the court finds from the petition, from other
286 statements under oath, or from reports of physicians or designated intellectual disability
287 professionals that there is a reasonable basis to believe that the individual to be committed:

288 (a) poses an immediate danger of physical injury to self or others;

289 (b) requires involuntary commitment pending examination and hearing;

290 (c) the individual was requested but refused to submit to an examination by a licensed
291 physician or designated intellectual disability professional; or

292 (d) the individual refused to voluntarily go to the division or to an intermediate care
293 facility for people with an intellectual disability recommended by the division.

294 (4) (a) If the court issues a detention order based on an application that did not include
295 a certification by a designated intellectual disability professional or physician in accordance
296 with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the
297 detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual,
298 report the results of the examination to the court and inform the court:

299 (i) whether the director or his designee believes that the individual has an intellectual
300 disability; and

301 (ii) whether appropriate treatment programs are available and will be used by the
302 individual without court proceedings.

303 (b) If the report of the director or his designee is based on an oral report of the
304 examiner, the examiner shall immediately send the results of the examination in writing to the
305 clerk of the court.

306 (5) Immediately after an individual is involuntarily committed under a detention order

or under Section 26B-6-607, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.

(6) (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:

(i) the individual to be committed;

(ii) the applicant;

(iii) any legal guardian of the individual;

(iv) adult members of the individual's immediate family;

(v) legal counsel of the individual to be committed, if any;

(vi) the division; and

(vii) any other person to whom the individual requests, or the court designates, notice to be given.

(b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.

(7) That notice shall:

(a) set forth the allegations of the petition and all supporting facts;

(b) be accompanied by a copy of any detention order issued under Subsection (3); and

(c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.

(8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:

(a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and

(b) the transfer will not be adverse to the interests of the individual.

(9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual disability professionals. The examinations

shall be conducted:

(i) separately;

(ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and

(iii) within a reasonable period of time after appointment of the examiners by the court.

(b) The court shall set a time for a hearing to be held within [10] five court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:

(i) the individual does not have an intellectual disability; or

(ii) treatment programs are available and will be used by the individual without court proceedings.

(10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

(b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.

(11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

(12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The court may, in its discretion:

(i) receive the testimony of any other person;

(ii) allow a waiver of the right to appear only for good cause shown;

(iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

(iv) upon motion of counsel, require the testimony of each examiner to be given out of

the presence of any other examiner.

(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 individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

(13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

(a) the individual to be committed has an intellectual disability;

(b) because of the individual's intellectual disability one or more of the following conditions exist:

(i) the individual poses an immediate danger of physical injury to self or others;

(ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

(14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.

(15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.

(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

(17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.

(c) The staff of the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of any discharge.

(d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.

(e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

431 Section 3. **Effective date.**
432 This bill takes effect on May 1, 2024.