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INVOLUNTARY COMMITMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Stephanie Pitcher

2

3 **LONG TITLE**

4 **General Description:**

5 This bill amends the criteria for involuntary civil commitment.

6 **Highlighted Provisions:**

7 This bill:

8 ▸ in certain circumstances, provides for the court-ordered civil commitment of an

9 individual who:

- 10 • has been charged with a crime;
- 11 • is incompetent to proceed;
- 12 • has a mental illness; and
- 13 • has a persistent unawareness of their mental illness or unreasonably refused to

14 undergo mental health treatment;

15 ▸ provides a severability clause; and

16 ▸ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a coordination clause.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **26B-5-332**, as renumbered and amended by Laws of Utah 2023, Chapter 308

24 **Utah Code Sections affected by Coordination Clause:**

25 **26B-5-332**, as renumbered and amended by Laws of Utah 2023, Chapter 308

26 **26B-5-351**, as renumbered and amended by Laws of Utah 2023, Chapter 308

27

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

29 *The following section is affected by a coordination clause at the end of this bill.*

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

31 **26B-5-332 . Involuntary commitment under court order -- Examination --**
32 **Hearing -- Power of court -- Findings required -- Costs -- Severability.**

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

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

40 (i) name;

41 (ii) date of birth; and

42 (iii) social security number;

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

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

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

51 (B) is sworn to under oath; and

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

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

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

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

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

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

63 in a temporary emergency facility, as described in Section 26B-5-334, to be detained for
64 the purpose of examination if:

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

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

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

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

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

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

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

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

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

95 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be
96 transferred and the local mental health authority may be substituted in accordance

97 with Utah Rules of Civil Procedure, Rule 25.

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

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

104 (b) one of whom is a licensed physician; 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 on
108 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
112 other medical facility, or at any other suitable place, including through telehealth,
113 that is not likely to 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
121 court; and

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

124 (iv) within 24 hours of examining the proposed patient, report to the court, orally or
125 in writing, whether the proposed patient is mentally ill, has agreed to voluntary
126 commitment, as described in Section 26B-5-360, or has acceptable programs
127 available to the proposed patient 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 a
134 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
136 authority, the local mental health authority's designee, or the medical examiner shall
137 immediately report the 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
140 authority or the local mental health authority's designee informs the court that the
141 proposed patient:
- 142 (a) does not meet the criteria in Subsection (16);
 - 143 (b) has agreed to voluntary commitment, as described in Section 26B-5-360;
 - 144 (c) has acceptable options for treatment programs that are available without court
145 proceedings; or
 - 146 (d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.
- 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
149 counsel, the court shall appoint counsel and allow counsel sufficient time to consult
150 with the proposed patient before the hearing.
- 151 (b) In the case of an indigent proposed patient, the county in which the proposed patient
152 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
156 hearing, to 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
160 patient, which 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
163 designated examiner to be given out of the presence of any other designated
164 examiners.

- 165 (c) The court shall conduct the hearing in as informal a manner as may be consistent
166 with orderly procedure, and in a physical setting that is not likely to have a harmful
167 effect on the mental health of the proposed patient, while preserving the due process
168 rights of the proposed patient.
- 169 (d) The court shall consider any relevant historical and material information that is
170 offered, subject to the rules of evidence, including reliable hearsay under Utah Rules
171 of Evidence, Rule 1102.
- 172 (e) (i) A local mental health authority or the local mental health authority's designee
173 or the physician in charge of the proposed patient's care shall, at the time of the
174 hearing, provide the court with the following information:
- 175 (A) the detention order;
 - 176 (B) admission notes;
 - 177 (C) the diagnosis;
 - 178 (D) any doctors' orders;
 - 179 (E) progress notes;
 - 180 (F) nursing notes;
 - 181 (G) medication records pertaining to the current commitment; and
 - 182 (H) whether the proposed patient has previously been civilly committed or under
183 an order for assisted outpatient treatment.
- 184 (ii) The information described in Subsection (15)(e)(i) shall also be supplied to the
185 proposed patient's counsel at the time of the hearing, and at any time prior to the
186 hearing upon request.
- 187 (16) (a) The court shall order commitment of an adult proposed patient to a local mental
188 health authority if, upon completion of the hearing and consideration of the
189 information presented, the court finds by clear and convincing evidence that:
- 190 (i) ~~(A)~~ the proposed patient has a mental illness;
 - 191 ~~[(ii)]~~ ~~(B)~~ because of the proposed patient's mental illness the proposed patient
192 poses a substantial danger to self or others;
 - 193 ~~[(iii)]~~ ~~(C)~~ the proposed patient lacks the ability to engage in a rational
194 decision-making process regarding the acceptance of mental treatment as
195 demonstrated by evidence of inability to weigh the possible risks of accepting
196 or rejecting treatment;
 - 197 ~~[(iv)]~~ ~~(D)~~ there is no appropriate less-restrictive alternative to a court order of
198 commitment; and

- 199 [(+)] (E) the local mental health authority can provide the proposed patient with
200 treatment that is adequate and appropriate to the proposed patient's conditions
201 and needs[-] ; or
- 202 (ii) (A) the proposed patient has been charged with a criminal offense;
203 (B) with respect to the charged offense, the proposed patient is found incompetent
204 to proceed as a result of a mental illness;
205 (C) the proposed patient has a mental illness;
206 (D) the proposed patient has a persistent unawareness of their mental illness and
207 the negative consequences of that illness, or within the preceding six months
208 has been requested or ordered to undergo mental health treatment but has
209 unreasonably refused to undergo that treatment;
210 (E) there is no appropriate less-restrictive alternative to a court order of
211 commitment; and
212 (F) the local mental health authority can provide the proposed patient with
213 treatment that is adequate and appropriate to the proposed patient's conditions
214 and needs.
- 215 (b) (i) If, at the hearing, the court determines that the proposed patient has a mental
216 illness but does not meet the other criteria described in Subsection (16)(a), the
217 court may consider whether the proposed patient meets the criteria for assisted
218 outpatient treatment under Section 26B-5-351.
- 219 (ii) The court may order the proposed patient to receive assisted outpatient treatment
220 in accordance with Section 26B-5-351 if, at the hearing, the court finds the
221 proposed patient meets the criteria for assisted outpatient treatment under Section
222 26B-5-351.
- 223 (iii) If the court determines that neither the criteria for commitment under Subsection
224 (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351
225 are met, the court shall dismiss the proceedings after the hearing.
- 226 (17) (a) (i) The order of commitment shall designate the period for which the patient
227 shall be treated.
- 228 (ii) If the patient is not under an order of commitment at the time of the hearing, the
229 patient's treatment period may not exceed six months without a review hearing.
- 230 (iii) Upon a review hearing, to be commenced before the expiration of the previous
231 order of commitment, an order for commitment may be for an indeterminate
232 period, if the court finds by clear and convincing evidence that the criteria

- 233 described in Subsection (16) will last for an indeterminate period.
- 234 (b) (i) The court shall maintain a current list of all patients under the court's order of
235 commitment and review the list to determine those patients who have been under
236 an order of commitment for the court designated period.
- 237 (ii) At least two weeks before the expiration of the designated period of any order of
238 commitment still in effect, the court that entered the original order of commitment
239 shall inform the appropriate local mental health authority or the local mental
240 health authority's designee of the expiration.
- 241 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
242 mental health authority or the local mental health authority's designee shall
243 immediately reexamine the reasons upon which the order of commitment was
244 based.
- 245 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
246 authority or the local mental health authority's designee determines that the
247 conditions justifying commitment no longer exist, the local mental health
248 authority or the local mental health authority's designee shall discharge the patient
249 from involuntary commitment and immediately report the discharge to the court.
- 250 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
251 authority or the local mental health authority's designee determines that the
252 conditions justifying commitment continue to exist, the court shall immediately
253 appoint two designated examiners and proceed under Subsections (8) through (14).
- 254 (c) (i) The local mental health authority or the local mental health authority's
255 designee responsible for the care of a patient under an order of commitment for an
256 indeterminate period shall, at six-month intervals, reexamine the reasons upon
257 which the order of indeterminate commitment was based.
- 258 (ii) If the local mental health authority or the local mental health authority's designee
259 determines that the conditions justifying commitment no longer exist, the local
260 mental health authority or the local mental health authority's designee shall
261 discharge the patient from the local mental health authority's or the local mental
262 health authority designee's custody and immediately report the discharge to the
263 court.
- 264 (iii) If the local mental health authority or the local mental health authority's designee
265 determines that the conditions justifying commitment continue to exist, the local
266 mental health authority or the local mental health authority's designee shall send a

- 267 written report of the findings to the court.
- 268 (iv) A patient and the patient's counsel of record shall be notified in writing that the
269 involuntary commitment will be continued under Subsection (17)(c)(iii), the
270 reasons for the decision to continue, and that the patient has the right to a review
271 hearing by making a request to the court.
- 272 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall
273 immediately appoint two designated examiners and proceed under Subsections (8)
274 through (14).
- 275 (18) (a) Any patient committed as a result of an original hearing or a patient's legally
276 designated representative who is aggrieved by the findings, conclusions, and order of
277 the court entered in the original hearing has the right to a new hearing upon a petition
278 filed with the court within 30 days after the day on which the court order is entered.
- 279 (b) The petition shall allege error or mistake in the findings, in which case the court shall
280 appoint three impartial designated examiners previously unrelated to the case to
281 conduct an additional examination of the patient.
- 282 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
283 conduct the new hearing in the manner otherwise permitted.
- 284 (19) The county in which the proposed patient resides or is found shall pay the costs of all
285 proceedings under this section.
- 286 (20) If any provision of Subsection (16)(a)(ii) or the application of any provision of
287 Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with
288 jurisdiction, the remainder of Subsection (16)(a)(ii) shall be given effect without the
289 invalid provision or application. The provisions of Subsection (16)(a)(ii) are severable.

290 **Section 2. Effective date.**

291 This bill takes effect on May 1, 2024.

292 **Section 3. Coordinating H.B. 203 with H.B. 299.**

293 If H.B. 203, Involuntary Commitment Amendments, and H.B. 299, Court-ordered
294 Treatment Modifications, both pass and become law, the Legislature intends that, on
295 May 1, 2024:

- 296 (1) this coordination clause supersedes the coordination clause in H.B. 299, which
297 coordinates H.B. 299 with H.B. 203;
- 298 (2) the changes to Subsection 26B-5-332(16) in H.B. 299 not be made; and
- 299 (3) the changes to Section 26B-5-351 in H.B. 299 not be made.