

Senator Lincoln Fillmore proposes the following substitute bill:

MENTAL HEALTH AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Brad M. Daw

LONG TITLE

General Description:

This bill amends provisions of the civil commitment code and the definition of "unprofessional conduct" applied to mental health professionals.

Highlighted Provisions:

This bill:

- ▶ requires that a mental health professional provide a patient the opportunity to waive the patient's privacy rights;
 - ▶ requires a designated examiner to consider a proposed patient's mental health history when evaluating the proposed patient for civil commitment;
 - ▶ allows a designated examiner to request a court order to obtain a proposed patient's mental health history;
 - ▶ requires a designated examiner to disclose to an unrepresented proposed patient the fact that the designated examiner may, by court order, obtain the proposed patient's mental health history;
 - ▶ limits the circumstances under which a court may terminate a civil commitment;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **58-60-110**, as last amended by Laws of Utah 2001, Chapter 281

32 **62A-15-618**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
33 Chapter 8

34 **62A-15-626**, as last amended by Laws of Utah 2008, Chapter 3

35 **62A-15-631**, as last amended by Laws of Utah 2018, Chapter 322

36 **62A-15-632**, as last amended by Laws of Utah 2018, Chapter 322

37 **62A-15-637**, as last amended by Laws of Utah 2018, Chapter 322



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

40 Section 1. Section **58-60-110** is amended to read:

41 **58-60-110. Unprofessional conduct.**

42 (1) As used in this chapter, "unprofessional conduct" includes:

43 (a) using or employing the services of any individual to assist a licensee in any manner
44 not in accordance with the generally recognized practices, standards, or ethics of the profession
45 for which the individual is licensed, or the laws of the state;

46 (b) failure to confine practice conduct to those acts or practices:

47 (i) in which the individual is competent by education, training, and experience within
48 limits of education, training, and experience; and

49 (ii) which are within applicable scope of practice laws of this chapter; ~~and~~

50 (c) disclosing or refusing to disclose any confidential communication under Section
51 **58-60-114** or **58-60-509**~~[-]~~; and

52 (d) ~~failure~~ **a pattern of failing** ~~to offer a patient the opportunity to waive the~~
52a patient's privacy rights under
53 the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160
54 and 164.

55 (2) "Unprofessional conduct" under this chapter may be further defined by division
56 rule.

56a ~~to~~ **(3) Notwithstanding Section 58-1-401, the division may not act upon the license of a**
56b **licensee for unprofessional conduct under Subsection (1)(d).** ~~to~~

57 Section 2. Section 62A-15-618 is amended to read:

58 **62A-15-618. Designated examiners.**

59 (1) A designated examiner shall consider a proposed patient's mental health history
60 when evaluating a proposed patient.

61 (2) A designated examiner may request a court order to obtain a proposed patient's
62 mental health records if a proposed patient refuses to share this information with the designated
63 examiner.

64 (3) [~~Designated examiners~~] A designated examiner shall be allowed a reasonable fee
65 by the county legislative body of the county in which the proposed patient resides or is found,
66 unless [~~they are~~] the designated examiner is otherwise paid.

67 Section 3. Section 62A-15-626 is amended to read:

68 **62A-15-626. Release from commitment.**

69 (1) (a) [~~A~~] Subject to Subsection (1)(b), a local mental health authority or [its] the
70 mental health authority's designee shall release from commitment any [person] individual who,
71 in the opinion of the local mental health authority or [its] the mental health authority's
72 designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.

73 (b) A local mental health authority's inability to locate a committed individual may not
74 be the basis for the individual's release, unless the court orders the release of the individual
75 after a hearing.

76 (2) A local mental health authority or [its] the mental health authority's designee may
77 release from commitment any patient whose commitment is determined to be no longer
78 advisable except as provided by Section 78A-6-120, but an effort shall be made to assure that
79 any further supportive services required to meet the patient's needs upon release will be
80 provided.

81 (3) When a patient has been committed to a local mental health authority by judicial
82 process, the local mental health authority shall follow the procedures described in Sections
83 62A-15-636 and 62A-15-637.

84 Section 4. Section 62A-15-631 is amended to read:

85 **62A-15-631. Involuntary commitment under court order -- Examination --**
86 **Hearing -- Power of court -- Findings required -- Costs.**

87 (1) A responsible [person] individual who has reason to know of an adult's mental

88 illness and the condition or circumstances that have led to the adult's need to be involuntarily
89 committed may initiate an involuntary commitment court proceeding by filing, in the district
90 court in the county where the proposed patient resides or is found, a written application that
91 includes:

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

94 (i) name;

95 (ii) date of birth; and

96 (iii) social security number; and

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

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

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

104 (B) is sworn to under oath; and

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

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

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

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

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

113 (3) If the court finds from the application, from any other statements under oath, or
114 from any reports from a mental health professional that there is a reasonable basis to believe
115 that the proposed patient has a mental illness that poses a substantial danger to self or others
116 requiring involuntary commitment pending examination and hearing; or, if the proposed patient
117 has refused to submit to an interview with a mental health professional as directed by the court
118 or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental

119 health officer or peace officer, to immediately place the proposed patient in the custody of a
120 local mental health authority or in a temporary emergency facility as provided in Section
121 [62A-15-634](#) to be detained for the purpose of examination.

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

129 (5) Notice of commencement of those proceedings shall be provided by the court as
130 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
131 legal counsel for the parties involved, the local mental health authority or its designee, and any
132 other persons whom the proposed patient or the court shall designate. That notice shall advise
133 those persons that a hearing may be held within the time provided by law. If the proposed
134 patient has refused to permit release of information necessary for provisions of notice under
135 this subsection, the extent of notice shall be determined by the court.

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

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

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

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

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

149 (c) one of whom may be designated by the proposed patient or the proposed patient's

150 counsel, if that designated examiner is reasonably available.

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

153 (10) The designated examiners shall:

154 (a) conduct their examinations separately;

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

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

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

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

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

162 (iv) that any information volunteered could form part of the basis for the proposed
163 patient's involuntary commitment; ~~and~~

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

165 and

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

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

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

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

180 (13) The court may terminate the proceedings and dismiss the application at any time,

181 including prior to the hearing, if the designated examiners or the local mental health authority
182 or its designee informs the court that the proposed patient:

- 183 (a) is not mentally ill;
- 184 (b) has agreed to voluntary commitment, as described in Section 62A-15-625; or
- 185 (c) has acceptable options for treatment programs that are available without court
186 proceedings.

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

193 (15) (a) The proposed patient, the applicant, and all other persons to whom notice is
194 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to
195 present and cross-examine witnesses. The court may, in its discretion, receive the testimony of
196 any other person. The court may allow a waiver of the proposed patient's right to appear only
197 for good cause shown, and that cause shall be made a matter of court record.

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

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

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

207 (e) (i) A local mental health authority or its designee[;] or the physician in charge of the
208 proposed patient's care shall, at the time of the hearing, provide the court with the following
209 information:

- 210 (A) the detention order;
- 211 (B) admission notes;

- 212 (C) the diagnosis;
- 213 (D) any doctors' orders;
- 214 (E) progress notes;
- 215 (F) nursing notes; and
- 216 (G) medication records pertaining to the current commitment.

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

219 (16) The court shall order commitment of a proposed patient who is 18 years of age or
220 older to a local mental health authority if, upon completion of the hearing and consideration of
221 the information presented [~~in accordance with Subsection (15)(d)~~], the court finds by clear and
222 convincing evidence that:

- 223 (a) the proposed patient has a mental illness;
- 224 (b) because of the proposed patient's mental illness the proposed patient poses a
225 substantial danger to self or others;
- 226 (c) the proposed patient lacks the ability to engage in a rational decision-making
227 process regarding the acceptance of mental treatment as demonstrated by evidence of inability
228 to weigh the possible risks of accepting or rejecting treatment;
- 229 (d) there is no appropriate less-restrictive alternative to a court order of commitment;

230 and

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

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

240 (b) The court shall maintain a current list of all patients under its order of commitment.
241 That list shall be reviewed to determine those patients who have been under an order of
242 commitment for the designated period. At least two weeks prior to the expiration of the

243 designated period of any order of commitment still in effect, the court that entered the original
244 order shall inform the appropriate local mental health authority or its designee. The local
245 mental health authority or its designee shall immediately reexamine the reasons upon which the
246 order of commitment was based. If the local mental health authority or its designee determines
247 that the conditions justifying that commitment no longer exist, it shall discharge the patient
248 from involuntary commitment and immediately report the discharge to the court. Otherwise,
249 the court shall immediately appoint two designated examiners and proceed under Subsections
250 (8) through (14).

251 (c) The local mental health authority or its designee responsible for the care of a patient
252 under an order of commitment for an indeterminate period shall, at six-month intervals,
253 reexamine the reasons upon which the order of indeterminate commitment was based. If the
254 local mental health authority or its designee determines that the conditions justifying that
255 commitment no longer exist, that local mental health authority or its designee shall discharge
256 the patient from its custody and immediately report the discharge to the court. If the local
257 mental health authority or its designee determines that the conditions justifying that
258 commitment continue to exist, the local mental health authority or its designee shall send a
259 written report of those findings to the court. The patient and the patient's counsel of record
260 shall be notified in writing that the involuntary commitment will be continued, the reasons for
261 that decision, and that the patient has the right to a review hearing by making a request to the
262 court. Upon receiving the request, the court shall immediately appoint two designated
263 examiners and proceed under Subsections (8) through (14).

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

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

273 Section 5. Section **62A-15-632** is amended to read:

274 **62A-15-632. Circumstances under which conditions justifying initial involuntary**
275 **commitment shall be considered to continue to exist.**

276 (1) After an individual is involuntarily committed to the custody of a local mental
277 health authority under Subsection [62A-15-631](#)(16), the conditions justifying commitment
278 under that subsection shall be considered to continue to exist, for purposes of continued
279 treatment under Subsection [62A-15-631](#)(17) or conditional release under Section [62A-15-637](#)];
280 ~~if the court finds that the patient is still mentally ill, and that absent an order of involuntary~~
281 ~~commitment and without continued treatment the patient will suffer severe and abnormal~~
282 ~~mental and emotional distress as indicated by recent past history, and will experience~~
283 ~~deterioration in the patient's ability to function in the least restrictive environment, thereby~~
284 ~~making the patient a substantial danger to self or others.], unless:~~

285 (a) the court terminates the civil commitment through a review hearing; or
286 (b) the local mental health authority or a designee of the local mental health authority
287 with custody over the patient discharges the patient and provides notice of the discharge to the
288 court, as described in Subsections [62A-15-631](#)(17)(c) and [62A-15-637](#)(2).

289 (2) A patient whose treatment is continued or who is conditionally released under [~~the~~
290 ~~terms of this section,]~~ Section [62A-15-637](#) shall be maintained in the least restrictive
291 environment available that can provide the patient with the treatment that is adequate and
292 appropriate.

293 (3) Except for good cause, a court may not terminate a civil commitment through a
294 review hearing if the patient:

295 (a) is under a conditional release agreement; and
296 (b) does not appear at the review hearing.

297 Section 6. Section **62A-15-637** is amended to read:

298 **62A-15-637. Release of patient to receive other treatment -- Placement in more**
299 **restrictive environment -- Procedures.**

300 (1) A local mental health authority or a designee of a local mental health authority may
301 conditionally release an improved patient to less restrictive treatment when:

302 (a) the authority specifies the [~~less restrictive~~] less restrictive treatment; and
303 (b) the patient agrees in writing to the less restrictive treatment.

304 (2) (a) Whenever a local mental health authority or a designee of a local mental health

305 authority determines that the conditions justifying commitment no longer exist, the local
306 mental health authority or the designee shall discharge the patient.

307 (b) If the discharged patient has been committed through judicial proceedings, the local
308 mental health authority or the designee shall prepare a report describing the determination and
309 shall send the report to the clerk of the court where the proceedings were held.

310 (3) (a) A local mental health authority or a designee of a local mental health authority
311 is authorized to issue an order for the immediate placement of a current patient into a more
312 restrictive environment, if:

313 (i) the local mental health authority or a designee of a local mental health authority has
314 reason to believe that the patient's current environment is aggravating the patient's mental
315 illness; or

316 (ii) the patient has failed to comply with the specified treatment plan to which the
317 patient agreed in writing.

318 (b) An order for a more restrictive environment shall ~~[include]~~:

319 (i) state the reasons for the order ~~[and shall]~~;

320 (ii) authorize any peace officer to take the patient into physical custody and transport
321 the patient to a facility designated by the local mental health authority~~[-]~~;

322 (iii) inform the patient of the right to a hearing, the right to appointed counsel, and the
323 other procedures described in Subsection 62A-15-631(14); and

324 (iv) ~~[Prior]~~ prior to or upon admission to the more restrictive environment, or upon
325 imposition of additional or different requirements as conditions for continued conditional
326 release from inpatient care, copies of the order shall be ~~[personally]~~ delivered to:

327 (A) the patient ~~[and sent to]~~;

328 (B) the person in whose care the patient is placed~~[-The order shall also be sent to]~~;

329 (C) the patient's counsel of record; and ~~[to]~~

330 (D) the court that entered the original order of commitment. ~~[The order shall inform~~
331 ~~the patient of the right to a hearing, as prescribed in this section, the right to appointed counsel,~~
332 ~~and the other procedures prescribed in Subsection 62A-15-631(14).]~~

333 (c) If the patient was in a less restrictive environment for more than 30 days and is
334 aggrieved by the change to a more restrictive environment, the patient or the patient's
335 representative may request a hearing within 30 days of the change. Upon receiving the request,

336 the court shall immediately appoint two designated examiners and proceed pursuant to Section
337 [62A-15-631](#), with the exception of Subsection [62A-15-631](#)(16), unless, by the time set for the
338 hearing, the patient is returned to the less restrictive environment or the patient withdraws the
339 request for a hearing, in writing.

340 (d) The court shall:

341 (i) make findings regarding whether the conditions described in Subsections (3)(a) and
342 (b) were met and whether the patient is in the least restrictive environment that is appropriate
343 for the patient's needs; and

344 (ii) designate, by order, the environment for the patient's care and the period for which
345 the patient shall be treated, which may not extend beyond expiration of the original order of
346 commitment.

347 (4) Nothing contained in this section prevents a local mental health authority or its
348 designee, pursuant to Section [62A-15-636](#), from discharging a patient from commitment or
349 from placing a patient in an environment that is less restrictive than that ordered by the court.