

NAVIGATING THE PATH OF CIVIL COMMITMENT OUTLINE

UPC Mental Health Conference

March 5, 2015

Craig Johnson

1. Civil Commitment Defined
 - a. Legal process through which an individual with symptoms of severe mental illness or intellectual disability is court-ordered into treatment in a hospital (inpatient), or the community (outpatient).
 - b. The civil commitment process is a system of due process to provide treatment to a vulnerable population.
 - c. The State may need to deprive someone of their civil liberties because they pose a danger to self or others due to mental illness or intellectual disability.
 - d. <http://dsamh.utah.gov/provider-information/civil-commitment/>
2. Utah Code § 77-15-6(5)(c)
 - a. If defendant is found “incompetent to stand trial *without* a substantial probability that the defendant may become competent in the foreseeable future,” court *shall* order the defendant released from custody **unless** civil commitment proceedings will be initiated within 7 days after court order, unless good cause is shown for longer.
 - b. Proceed under:
 - i. 62A-15-631 (mentally ill ~ SA/MH Act) or
 - ii. 62A-5-312 (intellectual disability ~ DSPD)
3. 62A-15-631(1)
 - a. 18+ YOA Proceedings for involuntary commitment start by filing a written application with the district court of the county in which the proposed patient resides, *by a responsible person who has reason to know of the condition or circumstances of the proposed patient* which lead to the belief that the individual has a **mental illness** and should be involuntarily committed.
 - b. 62A-15-Part 7: Involuntary Commitment <18 YOA
 - c. Application must include either:
 - i. (i) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification they have examined the individual, and that they are of the opinion that the individual is mentally ill and should be involuntarily committed; or
 - ii. (ii) a sworn written statement by the applicant that the individual has been requested to, but *has refused* to, submit to an examination of mental condition by a licensed physician or examiner.
 - d. Usually done by a USH Forensic Unit Committee
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 - e. Lonnie Johnson Prosecution

- i. March 30, 2011: Civil Commitment Application
- 4. 62A-15-631(3)
 - a. Mental Health Judge reviews application
 - i. STANDARD = Is there a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger to self or others requiring involuntary commitment?
 - ii. Exception = If the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily.
 - b. If criteria is met, then a Detention Order is issued “for purpose of examination”
 - c. Within 24 hours of Detention Order, a local mental health authority shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient, and whether treatment programs are available and acceptable without court proceedings.
- 5. 62A-15-631(5)
 - a. Notice of commencement of the proceedings & hearing shall be provided to:
 - i. The applicant,
 - ii. Any legal guardian,
 - iii. Any immediate adult family members,
 - iv. Legal counsel for the parties involved,
 - v. The local mental health authority, and
 - vi. Any other persons whom the proposed patient or the court shall designate.
- 6. 62A-15-631(8)
 - a. Within 24 hours, court appoints 2 designated examiners to examine the proposed patient & report back at hearing.
 - b. Hearing set within 10 days unless:
 - i. The patient is found NOT to be mentally ill, or
 - ii. The patient voluntarily agrees to commitment.
- 7. 62A-15-631(9)
 - a. Patient may have counsel appointed
 - b. The patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to:
 - i. Appear at the hearing,
 - ii. Testify, and
 - iii. Present and cross-examine witnesses.
 - iv. The court may, in its discretion, receive the testimony of any other person.
 - c. Exclusionary rule
 - d. 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 mental health of the patient.

- e. The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under U.R.E. 1102.
 - f. A local mental health authority or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:
 - i. the detention order;
 - ii. admission notes;
 - iii. the diagnosis;
 - iv. any doctors' orders;
 - v. progress notes;
 - vi. nursing notes; and
 - vii. relevant medication records.
8. 62A-15-631(10):
- a. COMMITMENT STANDARD = Clear & Convincing Evidence
 - 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, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;
 - iii. the 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 individual with treatment that's adequate and appropriate to patient's conditions and needs.
 - b. If all 5 are found, patient is civilly committed.
 - i. Patient may appeal the finding & request a new hearing w/in 30 days.
 - 1. Must allege error or mistake.
 - 2. Court may appoint 3 new examiners to review.
 - c. If all 5 are NOT found, application is denied & proceedings cease.
9. 62A-15-631(11).
- a. Review hearings at least every 6 mo.
 - i. Commitment may be for indeterminate period if court finds the conditions will last for an indeterminate period.
 - b. Local mental health authority re-examines reasons upon which commitment order was based at least two weeks prior to review hearing.
 - i. 2 designated examiners may be appointed
10. 62A-15-602. Definitions
- a. "Substantial Danger": The person, by their behavior, due to mental illness
 - i. (a) is at serious risk to:
 - 1. (i) commit suicide;

- 2. (ii) inflict serious bodily injury on himself or herself; or
- 3. (iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or
- ii. (b) is at serious risk to cause or attempt to cause serious bodily injury *or engage in harmful sexual conduct*.
- b. "Serious bodily injury"
 - i. bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- c. "Harmful Sexual Conduct" **2012 AMENDMENT (H.B. 14)**
 - i. any of the following conduct upon an individual without the individual's consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in Subsections [76-5-406\(1-12\)](#):
 - 1. (a) sexual intercourse;
 - 2. (b) penetration, however slight, of the genital or anal opening of the individual;
 - 3. (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
 - 4. (d) any sexual act causing substantial emotional injury or bodily pain.

11. 62A-15-632

- a. The conditions justifying commitment shall continue to exist if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment, the patient will suffer severe & abnormal mental & emotional distress as indicated by recent past history, & will experience deterioration in the patient's ability to function in the least restrictive environment thereby making the patient a substantial danger to self or others.

12. 62A-15-637(1)

- a. A local mental health authority may release an improved patient to less restrictive treatment as it may specify, and when agreed to in writing by the patient.
- b. Whenever a local mental health authority determines that the conditions justifying commitment no longer exist, the patient shall be discharged.
- c. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

13. 62A-15-637(2)

- a. A local mental health authority is authorized to issue an order for the immediate placement of a patient not previously released from an order of commitment into a more restrictive environment, if the local mental health

authority has reason to believe that the less restrictive environment in which the patient has been placed is aggravating the patient's mental illness, or that the patient has failed to comply with the specified treatment plan.

- b. Order shall include the reasons why & authorize any peace officer to take the patient into physical custody and transport him to a designated facility. The order shall inform the patient of the right to a hearing, the right to appointed counsel, etc.
- c. If the patient has been in the less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or his representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners &, after the hearing, make appropriate findings.

14. 77-15-6(13). Time Limits

- a. In no event may the maximum period of detention (for competency restoration) exceed the maximum period of incarceration which the defendant could receive if the defendant were convicted of the charged offense.
- b. This does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

15. 77-15-6(14). No Dismissal

- a. Neither release from a pretrial incompetency commitment nor civil commitment requires dismissal of criminal charges.
- b. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.