

## Agenda

### Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

October 25, 2017

12:00 to 2:00 p.m.

Administrative Office of the Courts

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room, Suite N31

12:00 p.m.	Welcome, minutes, meeting agenda		David Connors
12:10 p.m.	Roundtable "Crossroads of guardianship, involuntary commitment and essential treatment": <ul style="list-style-type: none"><li>• November 2, 8:30am-2:30pm, SLC Radisson</li><li>• Materials review - Tab 2</li></ul>	Tab 1	Mary Jane Ciccarello Karolina Abuzyarova
12:30 p.m.	ABA Justice Innovation grant: <ul style="list-style-type: none"><li>• Stakeholder time form - Tab 3</li><li>• Report on Phase 1 due Oct.31</li><li>• Brief survey from ABA on "light bulb" moments</li><li>• Judicial presentations schedule in 2018</li><li>• May 2018 District Court Judges conference - panel</li></ul>	Tab 2	Karolina Abuzyarova
12:50 p.m.	WINGS meeting schedule in 2018		David Connors

Committee webpage: <http://www.utcourts.gov/utc/wings>

Meeting schedule: October 25, December 27 (TBD)

Tab 1

**The Utah Judicial Council and Utah WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) sponsor:**

## ***Crossroads of Guardianship, Involuntary Commitment and Essential Treatment***

Thursday, November 2, 2017, 8:30 a.m.-2:30 p.m.  
Radisson Hotel, 214 South Temple, Salt Lake City

Participants from multiple disciplines will discuss issues of common interest concerning adult guardianship, involuntary commitment and commitment to essential treatment. Participants will examine goals and barriers for all stakeholders in involuntary commitment proceedings, the new cause of action for a court order of essential treatment, the decision making authority of guardians and the court's ability to grant certain types of decision making authority. The main goal of this roundtable is to bring together practitioners to share how they view these issues and to improve their understanding of the legal procedures and various practices involved. Ultimately, the roundtable's task is to articulate recommendations for further study and action to best protect and support adults in Utah along with their families, friends and caregivers.

### **Materials:**

- Agenda
- Definitions
- Statutes
- Background and questions
- Resources
- List of participants

## **Roundtable Agenda**

8:30 a.m.-Registration

9:00 a.m.-Introductory remarks and review of today's agenda, Judge Connors, 2<sup>nd</sup> District Judicial Court and WINGS Chair

9:30 a.m.-Review of definitions of guardianship, involuntary commitment and essential treatment

10:00 a.m.-Brainstorming on challenges and opportunities

10:45 a.m.-Small groups prioritize problems

11:15 a.m.-Small groups report to large group

12 noon-Lunch

12:40 p.m.-Large group identifies 2 to 3 focus areas based on small group priorities

1:00 p.m.-Small groups develop action steps

1:30 p.m.-Small groups report action steps to large group and action plan established

2:30 p.m.-Roundtable ends

## Definitions

**Commitment to essential treatment:** A civil law proceeding in which a district court shall order to essential treatment and intervention an adult who is determined by the court through clear and convincing evidence to be a sufferer of a substance abuse disorder. The court determines if the adult suffers from a substance abuse disorder, if there is a financial guarantee of ability to cover treatment costs not covered by the adult's insurance, and issues an order committing the adult to appropriate treatment.

**"Essential treatment"** and **"essential treatment and intervention"** mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder. Utah Code 62A-15-602(6).

**"Substance use disorder"** means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Utah Code 62A-15-1202(4).

**Guardianship of an adult:** Guardianship is the court process by which a judge determines that an individual is an incapacitated adult and appoints a guardian for the adult. A guardian is a person or institution appointed by a court to make decisions about the adult's well-being — residence, health care, nutrition, education, personal care, etc. The adult is often referred to as the "protected person" or "person under guardianship." A conservator is a person or institution appointed by the court to make decisions about a protected person's estate.

Under appropriate facts, the court might appoint a guardian or a conservator or both. If there is no conservator, the guardian has some of the conservator's responsibilities. Guardians and conservators must provide reports and financial accountings to the court unless specifically waived by statute, court rule or court order.

If the protected person needs help in some but not all areas of decision making, the court can order a limited guardianship. A limited guardianship is preferred under Utah law, and the court will grant a full guardianship only if no alternative exists. A limited guardian has only those powers listed in the court order. The court can also limit the authority of a conservator. Utah law states that if there are no limitations ordered by the court to the guardian's decision making authority, then a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

**"Incapacitated"** or **"incapacity"** is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the

essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions; or
- (c) provide for necessities such as food, shelter, clothing, health care, or safety.

Utah Code 75-1-201(22).

**Involuntary commitment:** Civil commitment is a legal process through which an individual with symptoms of severe mental illness is court ordered into treatment in a hospital (inpatient), or in the community (outpatient). Utah law and practice distinguish between voluntary admission and involuntary commitment of an adult. Utah law and practice also provide for a separate commitment process of a child/adolescent. The court makes a determination of the need for involuntary commitment of an adult or the commitment of a child/adolescent to mental health treatment and issues an order appropriate to the circumstances.

**"Mental illness"** means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning. Utah Code 62A-15-602(14).

**"Treatment"** means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment. Utah Code 62A-15-602(18).

**Utah Statutes** (Listed below are relevant statutes to help with discussion. This is not a complete compilation of all statutes.)

## Essential treatment:

Title 62A Utah Human Services Code

Chapter 15 Substance Abuse and Mental Health Act

Part 12 Essential Treatment and Intervention Act

**(Effective 5/9/2017)**

**Effective 5/9/2017**

### **62A-15-1202. Definitions.**

As used in this part:

- (1) "Essential treatment examiner" means:
  - (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder; or
  - (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.
- (2) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.
- (3) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:
  - (a) drug overdose;
  - (b) suicide;
  - (c) serious bodily self-injury;
  - (d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or
  - (e) causing or attempting to cause serious bodily injury to another individual.
- (4) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

**Effective 5/9/2017**

### **62A-15-1203. Petition for essential treatment -- Contents -- Guarantee for costs.**

- (1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the district court of the county in which the sufferer of the substance use disorder resides or is found.
- (2) The petition shall include:
  - (a) the respondent's:
    - (i) legal name;
    - (ii) date of birth, if known;
    - (iii) social security number, if known; and
    - (iv) residence and current location, if known;
  - (b) the petitioner's relationship to the respondent;
  - (c) the name and residence of the respondent's legal guardian, if any and if known;
  - (d) a statement that the respondent:

- (i) is suffering from a substance use disorder; and
  - (ii) if not treated for the substance use disorder presents a serious harm to self or others;
  - (e) the factual basis for the statement described in Subsection (4)(d); and
  - (f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.
- (3) Any petition filed under this section:
- (a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment; and
  - (b) shall be accompanied by a financial guarantee, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent.
- (4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

***Effective 5/9/2017***

**62A-15-1204. Criteria for essential treatment and intervention.**

A district court shall order an individual to undergo essential treatment for a substance use disorder when the district court determines by clear and convincing evidence that the individual:

- (1) suffers from a substance use disorder;
- (2) can reasonably benefit from the essential treatment;
- (3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
- (4) presents a serious harm to self or others.

***Effective 5/9/2017***

**62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.**

- (1) A district court shall review the assertions contained in the verified petition described in Section [62A-15-1203](#).
- (2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:
  - (a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;
  - (b) provide notice of:
    - (i) the contents of the petition, including all assertions made;
    - (ii) a copy of any order for detention or examination;
    - (iii) the date of the hearing;
    - (iv) the purpose of the hearing;
    - (v) the right of the respondent to be represented by legal counsel; and
    - (vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;
  - (c) provide notice to:
    - (i) the respondent;
    - (ii) the respondent's guardian, if any; and
    - (iii) the petitioner; and



- (d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date by two essential treatment examiners.
- (3) The essential treatment examiners shall examine the respondent to determine:
  - (a) whether the respondent meets each of the criteria described in Section 62A-15-1204;
  - (b) the severity of the respondent's substance use disorder, if any;
  - (c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and
  - (d) the appropriate duration for essential treatment, if essential treatment is recommended.
- (4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.
- (5) The court may, based upon the findings of the essential treatment examiners, terminate the proceedings and dismiss the petition.
- (6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.
- (7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.
- (8) If, upon completion of the hearing, the court finds that the criteria in Section 62A-15-1204 are met, the court shall order essential treatment for an initial period that:
  - (a) does not exceed 360 days, subject to periodic review as provided in Section 62A-15-1206; and
  - (b) (i) is recommended by an essential treatment examiner; or
  - (ii) is otherwise agreed to at the hearing.
- (9) The court shall designate the facility for the essential treatment, as:
  - (a) described in the petition;
  - (b) recommended by an essential treatment examiner; or
  - (c) agreed to at the hearing.
- (10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.
- (11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

***Effective 5/9/2017***

**62A-15-1206. Periodic review -- Discharge.**

A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

- (1) at least every 90 days after the day on which a patient is admitted, unless a court orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;
- (2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;
- (3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and
- (4) after discharging an essential treatment patient, send a report describing the reasons for discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

***Effective 5/9/2017***

**62A-15-1209. Essential treatment for substance use disorder -- Rights of patient.**

All applicable rights guaranteed to a patient by Sections [62A-15-641](#) and [62A-15-642](#) shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.

## Guardianship of an adult:

**Title 75 Utah Uniform Probate Code**  
**Chapter 5 Protection of Persons Under Disability and Their Property**  
**Part 3 Guardians of Incapacitated Persons**

**Effective 5/10/2016**

**75-5-303. Procedure for court appointment of a guardian of an incapacitated person.**

- (1) The incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.
- (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated. If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition. If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
  - (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
  - (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or
  - (c) upon an express finding of good cause, the court orders otherwise.
- (4) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.
- (5)
  - (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.
  - (b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:
    - (i) fourth stage Alzheimer's Disease;
    - (ii) extended comatosis; or
    - (iii) (A) an intellectual disability; and  
(B) an intelligence quotient score under 25.
  - (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor,

and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.

- (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:
- (i) the person is the biological or adopted child of the petitioner;
  - (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
  - (iii) the person appears in court with the petitioner;
  - (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner; and
  - (v) the court is satisfied that counsel is not necessary in order to protect the interests of the person.

**Effective 5/9/2017**

**75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.**

- (1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.
- (2) (a) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.  
(b) An order of appointment of a limited guardianship shall state the limitations of the guardianship. Letters of guardianship for a limited guardianship shall state the limitations of the guardianship unless the court determines for good cause shown that a limitation should not be listed in the letters.
- (3) A guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

**Effective 5/9/2017**

**75-5-312. General powers and duties of guardian -- Penalties.**

- (1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.
- (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.
- (3) In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:
  - (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.
  - (b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and

commence protective proceedings if other property of the ward is in need of protection.

- (c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
- (d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.
- (e) If no conservator for the estate of the ward has been appointed, the guardian may:
  - (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;
  - (ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and
  - (iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but the guardian may not use funds from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult. The guardian shall exercise care to conserve any excess for the ward's needs.
- (f)
  - (i) A guardian is required to report the condition of the ward and of the estate which has been subject to the guardian's possession or control, as required by the court or court rule.
  - (ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
    - (A) the guardian's own observations; or
    - (B) information from the ward's physician or other medical care providers.
  - (iii) A guardian is required to immediately notify all interested persons of the ward's death.
  - (iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party.
- (v)
  - (A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis.
  - (B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court.
  - (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information.
  - (D) The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council.
  - (E) An annual report shall be examined and approved by the court.
  - (F) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.
- (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal

report annually to the court. The report shall be examined and approved by the court.

- (vii) The guardian shall also render an annual accounting of the status of the person to the court which shall be included in the petition or the informal annual report as required under Subsection (3)(f). If a fee is paid for an accounting of an estate, no fee shall be charged for an accounting of the status of a person.
- (viii) If a guardian:
  - (A) makes a substantial misstatement on filings of annual reports;
  - (B) is guilty of gross impropriety in handling the property of the ward; or
  - (C) willfully fails to file the report required by this subsection, after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000. The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.
- (ix) The provisions and penalties in this Subsection (3)(f) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.
- (x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-309.
- (g) If a conservator has been appointed:
  - (i) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and
  - (ii) the guardian shall account to the conservator for funds expended.
- (4) (a) A court may, in the order of appointment, place specific limitations on the guardian's power.
- (b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.
- (c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).
- (5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.
- (6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

## Involuntary commitment:

**Title 62A Utah Human Services Code**  
**Chapter 15 Substance Abuse and Mental Health Act**  
**Part 6 Utah State Hospital and Other Mental Health Facilities**

### **62A-15-625. Voluntary admission of adults.**

- (1) A local mental health authority or its designee may admit to that authority, for observation, diagnosis,

care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.

- (2) (a) No adult may be committed or continue to be committed to a local mental health authority against his will except as provided in this chapter.
- (b) A person under 18 years of age may be committed to the physical custody of a local mental health authority only after a court commitment proceeding in accordance with the provisions of [Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health](#).
- (3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Subsection [77-18-1\(13\)](#) have been met.

#### **62A-15-628. Involuntary commitment -- Procedures.**

- (1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:
  - (a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection [62A-15-629\(1\)](#);
  - (b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection [62A-15-629\(2\)](#); or
  - (c) commitment on court order, as provided in Section [62A-15-631](#).
- (2) A person under 18 years of age may be committed to the physical custody of a local mental health authority only after a court commitment proceeding in accordance with the provisions of [Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health](#).

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

- (1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, 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. The application shall include:
  - (a) unless the court finds that the information is not reasonably available, the individual's:
    - (i) name;
    - (ii) date of birth; and
    - (iii) Social Security number; and
  - (b) either:
    - (i) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that the physician or designated examiner is of the opinion that the individual is mentally ill and should be involuntarily committed; or
    - (ii) a written statement by the applicant that:
      - (A) the individual 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.



- (2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.
- (b) The consultation described in Subsection (2)(a):
  - (i) may take place at or before the hearing; and
  - (ii) is required if the local mental health authority appears at the hearing.
- (3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger, as defined in Section [62A-15-602](#), to self or others requiring involuntary commitment pending examination and hearing; or, 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, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section [62A-15-634](#) to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee 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 under Section [62A-15-625](#), and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, the examiner shall immediately send the report in writing to the clerk of the court.
- (4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient before, or upon, placement in the custody of a local mental health authority or, with respect to any individual presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.
- (5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.
- (6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of [Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health](#).
- (7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.
- (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.
- (b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the basis for the patient's involuntary

commitment, and that findings resulting from the examination will be made available to the court.

- (c) A time shall be set for a hearing to be held within 10 calendar days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that the patient has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.
- (9)
  - (a) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the patient before the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found.
  - (b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.
  - (c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.
  - (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 proposed 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 Rule 1102, Utah Rules of Evidence.
  - (f)
    - (i) A local mental health authority or its designee, or the physician in charge of the 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; and
      - (G) medication records pertaining to the current commitment.
    - (ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.
- (10) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)(e), the court finds by clear and convincing evidence that:
  - (a) the proposed patient has a mental illness;
  - (b) because of the proposed patient's mental illness the proposed patient poses a substantial danger, as defined in Section 62A-15-602, 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;
  - (c) 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;



- (d) there is no appropriate less-restrictive alternative to a court order of commitment; and
  - (e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to the individual's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.
- (11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.
- (b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).
- (c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).
- (12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.
- (13) Any person committed as a result of an original hearing or a person'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 of the entry of the court order. The petition must 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. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.
- (14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

**62A-15-636. Periodic review -- Discharge.**

Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. 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.

## Background and questions

Utah law recognizes that an adult might need help in making decisions under certain circumstances. A legal decision maker may be designated by an adult in a power of attorney or advance health care directive, for example, presuming the adult has the necessary legal capacity to make such a designation.

The appropriate district court can appoint a guardian as the legal decision maker for an adult who is judicially determined through clear and convincing evidence to be incapacitated. A guardian has the legal decision making authority granted by the court based on the needs of the adult. While it is generally accepted that a guardian can consent to medical treatment on behalf of the adult, there is confusion among practitioners and the public as to the extent of the guardian's decision making authority.

The appropriate district court can also determine an adult's need to be involuntarily committed to mental health treatment and to essential treatment for substance abuse.

The various stakeholders need information about the governing laws, the court proceedings involved, the role of the courts, the extent of the decision making authority of court-appointed guardians, the treatment authority of medical care providers, the interests of families and caregivers, and the rights of the adults involved in these proceedings.

The roundtable provides an opportunity to professional stakeholders to identify areas of confusion and/or concern. The following questions are meant as suggestions for roundtable discussion:

Can a court-appointed guardian consent to involuntary treatment for the adult? To essential treatment for the adult? Utah law indicates that a guardian cannot provide such consent even though Utah practice indicates otherwise. Even though guardians must receive notice of involuntary commitment and essential treatment petitions, what is the role of guardians in these proceedings? If there is no guardian appointed, who else can and/or should be involved in medical decision making for the adult who lacks capacity to engage in informed consent or who has been involuntarily committed to mental health or essential treatment?

The adult in an involuntary commitment has the right to legal counsel and public defenders provide representation. Even though Utah law requires respondents in guardianship proceedings to have independent legal counsel, the court does not have the resources to appoint lawyers as in commitment proceedings. In essential treatment proceedings, even though the respondent may have legal counsel, there is no system in place to provide such help. Why does a respondent in these three types of proceedings have a different due process right to counsel? Who should be responsible for making sure a respondent has independent counsel?

Guardians (except in very specific circumstances) must provide annual reports and financial accountings to the court and must also provide notice to all interested parties of the reports. Interested parties have the right to object to the reports. After involuntary commitment and essential treatment, the treatment providers are obliged to file reports with the court. Who has the right to see and to object to these reports? In all three types of proceedings, who reviews the reports? What happens to them? How do they help the adult?

Court staff are generally familiar with processing guardianship and involuntary commitment cases. Essential treatment cases are new under Utah law and the Essential Treatment and Intervention Act does not provide specific guidelines for court procedures. Should the courts treat essential treatment cases in similar ways to involuntary commitment cases? What are the filing fees for the three case types? What forms are available for the three case types for the public?

What training do judges, court staff and lawyers receive about these three types of proceedings?

What training do medical treatment providers receive?

What information and training do guardians receive?

What information do adults facing these proceedings receive and how can they best protect their rights to due process and to appropriate support in decision making and in treatment?

What training and information should be available to all stakeholders?

Who develops, maintains and distributes such training and information?

How effective are guardianships, involuntary commitments, and essential treatment orders in helping people in need? Are there solutions other than court orders?

## Resources (Utah government sites)

- Civil commitment information, forms, resources:

<https://dsamh.utah.gov/provider-information/civil-commitment/>

- Finding legal help:

<https://www.utcourts.gov/selfhelp/legalhelp.php>

- Guardianship information, forms, resources:

<https://www.utcourts.gov/howto/family/gc/>

- Substance abuse information and resources:

<https://dsamh.utah.gov/substance-use-disorders/>

David	Connors	Associate Presiding Judge	Second District Court, Utah WINGS Chair	dconnors@utcourts.gov	(801) 447-3860	Yes	
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Mary Jane	Ciccarello	Private attorney, Co-director	Borchard Foundation Center on Law & Aging	mjc@borchardcenter.org	(801)598-5810	Yes	
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Andrew	Riggle	Public Policy Advocate	Disability Law Center	ariggle@disabilitylawcenter.org	(801) 363-1347 x 3209	Yes	
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Wendy	Fayles	Family and Consumer Mentor	National Alliance on Mental Illness	wendyf@namiu.org	(801) 869-2873	Yes	
Becky	Allred	Private guardian	Stagg Fiduciary Services LLC	beckya@staggfs.com	(801) 433-0460	Yes	
Doug	Thomas	Deputy Director	Division of Substance Abuse and Mental Health, Adult Mental Health	dthomas@utah.gov	(801) 538-4298	Yes	
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Brent	Kelsey	Assistant Director, Essential Treatment	Division of Substance Abuse and Mental Health	bkelsey@utah.gov	(801) 538-4305	Yes	
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Lois	Brandriet	Private Guardian	Guardian Advocate Services	loisb@guardianadvocateservices.co	(801) 433-0461		
Emogene	Hennick	Licensed Clinical Social Worker	University of Utah, Geriatric Clinic	emogene.hennick@utah.edu	(801) 581-2628	Yes	
Patrick	Casey	Commissioner	Third District Court	ccasey@utcourts.gov	(801) 238-7021	Yes, 11-12pm	
Kim	Luhn	Commissioner	Third District Court	cluhn@utcourts.gov	(801) 238-7029	Yes	
Joanna	Sagers	Commissioner	Third District Court	jbsagers@utcourts.gov	(801) 238-7040		
Michelle	Blomquist	Commissioner	Third District Court	cblomquist@utcourts.gov	(801) 238-7098	Yes, 9-11am	
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Vernice	Trease	District Court Judge	Third District Court	vtrease@utcourts.gov	(801) 238 7509	Maybe	
Laura	Scott	District Court Judge	Third District Court	lsscott@utcourts.gov	(801) 238-7142		
Paul	Parker	District Court Judge	Third District Court	pparker@utcourts.gov	(801) 238-7190		
Barry	Lawrence	District Court Judge	Third District Court	blawrence@utcourts.gov	(801) 238-7120		
Royal	Hansen	District Court Judge	Third District Court	rhansen@utcourts.gov	(801) 238-7370	Yes	
Randall	Skanchy	Presiding Judge	Third District Court	rskanchy@utcourts.gov	(801) 238-7700		
Shane	Bahr	District Court Administrator	Utah State Courts	shaneb@utcourts.gov	(801) 429-1038	Yes	
Tara	Harrison	Associate General Counsel	Office of Legislative Research and General Counsel	tharrison@le.utah.gov	(801) 326-1658	Yes	
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Todd	Weiler	Senator	Utah State Legislature	tweiler@le.utah.gov	(801) 599-9823		
Rebecca	Edwards	Representative	Utah State Legislature	beckyedwards@le.utah.gov	(801) 554-1968		
Lowry	Snow	Representative	Utah State Legislature	visnow@le.utah.gov	(435) 703-3688		
Lyle	Hillyard	Senator	Utah State Legislature	lhillyard@le.utah.gov	(435) 753-0043		

# Tab 2



## WINGS Stakeholder/Volunteer Time Reporting Form (Version 1)

Please fill out this form to show the dates and number of hours you spent on WINGS activities. Please include the number of hours spent on any of the following:

- Participation in WINGS meetings (e.g., stakeholder meetings, steering committee meetings, workgroup/committee/subcommittee meetings)
- Telephone calls related to WINGS
- Correspondence related to WINGS
- Preparation for WINGS meetings
- Travel to and from WINGS meetings
- Any other work related to WINGS (e.g., developing reports, proposals, testimony)

The time I spend on WINGS activities is considered a contribution. By my signature, I authorize the court to report the amount of time I spend on WINGS activities and the value of my time to the ABA Commission on Law and Aging WINGS Project staff.

Dates	Number of Hours	Brief Description of WINGS Activities

In calculating an hourly rate, a Stakeholder/Volunteer should be guided by Federal regulations concerning grants (2 CFR 200.306(e)):

- “Rates for third-party volunteer services ... must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. ... (P)aid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.”

***My hourly rate should be computed at \$\_\_\_\_\_.*** *By my signature, I hereby affirm that I typically charge the stated fees for the services described; or that this hourly rate is reasonable and is based on the rate I charge for similar services; or that it is based on my salary plus fringe benefits or some other reasonable basis for determination.*

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Number of Years Relevant Experience: \_\_\_\_\_

***My salary is paid in part or in full with Federal dollars: Yes \_\_\_\_\_ No \_\_\_\_\_***

**For Court Use Only:**

Total Contribution (Total hours contributed \_\_\_\_\_ X hourly rate \_\_\_\_\_) =  
\$ \_\_\_\_\_

Amount of Total Contribution Allowable as Project Match (i.e., not from Federal Dollars):  
\$ \_\_\_\_\_

Approved by: \_\_\_\_\_

*By my signature, I confirm that the rate is reasonable.*

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Court: \_\_\_\_\_