

**Insanity Defense Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carol S. Moss**

Senate Sponsor:

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**LONG TITLE****General Description:**

This bill modifies provisions relating to the criminal defense of not guilty by reason of insanity.

**Highlighted Provisions:**

This bill:

- modifies the circumstances under which a defendant may plead not guilty to a first degree or capital felony by reason of insanity;
- places the burden of proof on a defendant asserting a defense of not guilty by reason of insanity to a first degree or capital felony charge;
- modifies provisions relating to supervision, assessment, and release of a defendant committed to the Department of Health and Human Services after being found not guilty of a criminal offense by reason of insanity;
- provides that a judge presiding over the prosecution of an individual asserting the defense of not guilty by reason of insanity may exercise discretion in ordering the Department of Health and Human Services to conduct a mental examination of the defendant under certain circumstances;
- defines terms; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-2-305**, as last amended by Laws of Utah 2024, Chapter 177

**77-16a-301**, as last amended by Laws of Utah 2023, Chapter 184

**77-16a-304**, as last amended by Laws of Utah 2023, Chapter 184

31 **77-16a-305**, as last amended by Laws of Utah 2023, Chapter 184

32 **77-16a-306**, as last amended by Laws of Utah 2023, Chapter 184

33  
34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **76-2-305** is amended to read:

36 **76-2-305 . Mental condition -- Use as a defense -- Influence of alcohol or other**  
37 **substance voluntarily consumed.**

38 (1) As used in this section:

39 (a)(i) "Mental condition" means a mental illness or a mental disability that  
40 substantially impairs an individual's mental, emotional, or behavioral functioning.

41 (ii) "Mental condition" does not include a mental abnormality that is manifested  
42 solely by repeated criminal conduct, anti-social behavior, or a substance use  
43 disorder.

44 (b) "Mental disability" means an intellectual disability or a neurodevelopmental disorder  
45 as those terms are defined in the current edition of the Diagnostic and Statistical  
46 Manual of Mental Disorders published by the American Psychiatric Association.

47 (c)(i) "Mental illness" means the following mental disorders as described in the most  
48 recent edition of the Diagnostic and Statistical Manual of Mental Disorders  
49 published by the American Psychiatric Association:

50 [(i)] (A) schizophrenia spectrum and other psychotic disorders;

51 [(ii)] (B) bipolar I disorder;

52 [(iii)] (C) post-traumatic stress disorder; or

53 [(iv)] (D) other serious mental health conditions with psychotic features.

54 (ii) "Mental illness" does not include:

55 (A) pedophilic disorder or other paraphilic disorders;

56 (B) psychopathy;

57 (C) sociopathy;

58 (D) antisocial personality disorder or other personality disorders; or

59 (E) a diagnosis related to voluntary acute intoxication or substance use disorder.

60 (d) "Wrongfulness" means legal wrongfulness or moral wrongfulness.

61 (2)(a) It is a defense to a first degree or capital felony charge that the defendant, as a  
62 result of a mental condition, was unable to appreciate:

63 (i) the nature and quality of the defendant's actions; or

64 (ii) the wrongfulness of the defendant's actions.

(b) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of a mental condition, lacked the mental state required as an element of the offense charged.

~~[(b)]~~ (c) A mental condition is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.

(3) A defendant asserting the defense described in Subsection (2)(a) has the burden of pleading and proving by clear and convincing evidence the facts necessary to entitle the defendant to be found not guilty under this section.

~~[(3)]~~ (4) ~~[The defense defined in this section]~~ Each defense described in Subsection (2) includes the defenses known as "insanity" and "diminished mental capacity."

~~[(4)]~~ (5) A ~~[person]~~ defendant who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of a mental condition if the alcohol or substance caused, ~~[triggered,]~~ or substantially contributed to~~[the mental condition.]~~ :

(a) the defendant's inability to appreciate, as described in Subsection (2)(a):

(i) the nature and quality of the defendant's actions; or

(ii) the wrongfulness of the defendant's actions; or

(b) the defendant lacking the mental state required as an element of the offense charged as described in Subsection (2)(b).

Section 2. Section **77-16a-301** is amended to read:

**77-16a-301 . Mental examination of defendant.**

(1) As used in this section, "incompetent to proceed" means the same as that term is defined in Section 77-15-2.

(2) No defendant may be evaluated under this section unless the defendant has first been, or is concurrently, evaluated to determine whether the defendant is incompetent to proceed under Chapter 15, Defendant's Competency to Proceed.

(3)(a) A defendant who asserts a defense described in Subsection 76-2-305(2) shall receive at least two examinations to investigate the defendant's mental condition.

(b) The examinations described in Subsection (3)(a) may be ordered by a court as described in this section, or conducted by another independent examiner.

(4) A forensic psychiatrist or forensic psychologist shall conduct any examination described

99        in this section.

100    [(1)] (5)(a) When the court receives notice that a defendant intends to claim that the  
101        defendant is not guilty by reason of insanity or that the defendant had diminished  
102        mental capacity, or that the defendant intends to assert special mitigation under  
103        Subsection 76-5-205.5(2)(a), the court [shall] may order the department to examine  
104        the defendant and investigate the defendant's mental condition.

105        (b) The person or organization directed by the department to conduct the examination  
106        shall testify at the request of the court or either party in a proceeding in which the  
107        testimony is otherwise admissible.

108        (c) Pending trial, unless the court or the executive director directs otherwise, the  
109        defendant shall be retained in the same custody or status the defendant was in at the  
110        time the examination was ordered.

111    [(2)] (6)(a) The defendant shall be available and shall fully cooperate in the examination  
112        by the department and other independent examiners for the defense and the  
113        prosecuting attorney.

114        (b) If the defendant who is not incompetent to proceed fails to be available and to fully  
115        cooperate, and that failure is established to the satisfaction of the court at a hearing  
116        prior to trial, the defendant is barred from presenting expert testimony relating to the  
117        defendant's defense of a mental condition at the trial of the case.

118        (c) The department shall complete the examination within [30] 90 days after the court's  
119        order, and shall prepare and provide to the court prosecutor and defense counsel a  
120        written report concerning the condition of the defendant.

121    [(3)] (7) Within 10 days after receipt of the report described in Subsection [(2)(e)] (6)(c)  
122        from the [-]department, but not later than five days before the trial of the case, or at any  
123        other time the court directs, the prosecuting attorney shall file and serve upon the  
124        defendant a notice of rebuttal of the defense of a mental condition, which shall contain  
125        the names of witnesses the prosecuting attorney proposes to call in rebuttal.

126    [(4)] (8) The report of another independent examiner is admissible as evidence ~~[upon~~  
127        ~~stipulation of the prosecution and defense]~~.

128    [(5)] (9)(a) This section does not prevent a party from producing other testimony as to  
129        the mental condition of the defendant.

130        (b) An expert witness who is not appointed by the court is not entitled to compensation  
131        under Subsection [(7)] (11).

132    [(6)] (10) This section does not require the admission of evidence not otherwise admissible.

[~~(7)~~] (11)(a) The department shall pay the expenses of an examination ordered by the court under this section.

(b) The department shall charge the county where the prosecution is commenced for travel expenses associated with an examination incurred by a defendant.

(c) The department shall charge the ~~[entity commencing]~~ county where the prosecution is commenced for an examination of a defendant charged with a violation of a municipal or county ordinance.

Section 3. Section **77-16a-304** is amended to read:

**77-16a-304 . Review after commitment.**

(1)(a) The executive director, or the executive director's designee, shall establish a review team of at least three ~~[qualified staff members]~~ licensed mental health professionals to review the defendant's mental condition at least every ~~[six]~~ 12 months.

(b) When establishing a review team under this Subsection (1), the executive director, or the executive director's designee, shall take into account best practices for assessing the defendant's risk of violence.

~~[(b)]~~ (c) The review team described in ~~[Subsection (1)(a)]~~ this Subsection (1) shall include:

(i) at least one forensic psychiatrist or forensic psychologist; and

(ii) if the defendant has an intellectual disability, at least one staff member who is a designated intellectual disability professional.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental condition, or, that the defendant ~~[still has a]~~ has not recovered from the defendant's mental condition but does not present a substantial danger to self or others, the executive director, or the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and

(b) provide the court with a report stating the facts that form the basis for the recommendation.

(3)(a) The court shall conduct a hearing within ~~[10 business]~~ 30 days after ~~[receipt of the executive director's, or the executive director's designee's, notification]~~ the day on which the court receives the notification described in Subsection (2).

(b) The court clerk shall provide notice of the date and time of the hearing to:

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.

(4)(a) The court shall order that the defendant be discharged from commitment in accordance with Section 77-16a-306 if the court finds that the defendant:

(i) ~~[no longer has]~~ has recovered from a mental condition; or

(ii) has not recovered from a mental condition, but no longer presents a substantial danger to self or others.

(b) The court shall order the ~~[person]~~ defendant conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:

(i) has a mental condition;

(ii) is not a substantial danger to self or others; and

(iii) can be ~~[controlled]~~ adequately controlled if conditionally released with proper care, medication, supervision, and treatment as a condition of release.

(c) The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from the defendant's mental condition;

(ii) is a substantial danger to self or others; and

(iii) cannot be adequately ~~[be]~~ controlled if conditionally released ~~[on supervision]~~ with proper care, medication, supervision, and treatment as a condition of release.

(d)(i) ~~[Except as provided in Subsection (4)(d)(ii), the]~~ The court may not discharge a defendant whose mental condition is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that, without continued medication or hospitalization, the defendant's mental condition will reoccur, making the defendant a substantial danger to self or others.

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Section 4. Section **77-16a-305** is amended to read:

**77-16a-305 . Conditional release.**

(1) If the review team described in Subsection 77-16a-304(1) finds that a defendant is not eligible for discharge~~;~~ in accordance with ~~[Section 77-16a-304]~~ Subsection 77-16a-304(4)(a), but that the defendant's mental condition and dangerousness can be adequately controlled with proper care, medication, supervision, and treatment if the defendant is conditionally released, as described in Subsection 77-16a-304(4)(b), the

review team shall prepare a report and notify the executive director, or the executive director's designee, that the defendant is a candidate for conditional release.

(2) [The] Upon receipt of the report described in Subsection (1), the executive director, or the executive director's designee, shall prepare a conditional release plan~~[-listing]~~ that:  
(a) describes the type of care, supervision, medication, and treatment that the [individual] defendant needs, taking into account best practices for assessing the defendant's risk of violence; and

(b) ~~[recommending]~~ recommends a treatment provider.

(3) The executive director, or the executive director's designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan described in Subsection (2).

(4) The court shall conduct a hearing on the issue of conditional release within 30 days after [ receipt of those documents] the day on which the court receives the documents described in Subsection (3).

~~[(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to self or others, the defendant can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.]~~

(5)(a) The department may provide ~~[treatment]~~ the care, supervision, medication, and treatment in accordance with the defendant's conditional release plan described in Subsection (2), or contract with a local mental health authority or other public or private provider to provide the care, supervision, medication, and treatment~~[-for a defendant who is conditionally released under this section].~~

(b) A local mental health authority, or other public or private provider that provides care, supervision, medication, and treatment to a defendant who is conditionally released under this section shall immediately notify the executive director, or the executive director's designee, upon learning that the defendant is not compliant with the defendant's conditional release plan.

(6)(a) If the department receives notice or otherwise finds that the defendant is not compliant with the defendant's conditional release plan, the department may issue an order temporarily revoking the defendant's conditional release and requiring the defendant to immediately submit to the custody of the department.

(b)(i) Temporary revocation of a defendant's conditional release under Subsection

(6)(a) is effective for seven business days after the day on which the defendant is taken into the custody of the department, unless otherwise ordered by the court.

(ii) A peace officer is authorized to take a defendant whose conditional release is temporarily revoked under Subsection (6)(a) into physical custody and transport the defendant to the custody of the department.

(c) Upon temporary revocation of a defendant's conditional release, the executive director, or the executive director's designee, shall immediately provide the court, the defendant's attorney, and the prosecuting attorney with written notice of the:

(i) temporary revocation; and

(ii) reason for the temporary revocation.

(7) Before the day on which the court conducts the initial hearing described in Subsection (8)(a), the review team described in Subsection 77-16a-304(1) shall review the mental condition of the defendant and provide a report to the court that describes whether the defendant remains a candidate for conditional release under Subsection (1).

(8)(a) The court shall conduct an initial hearing within seven business days after the day on which the defendant is taken into the custody of the department and reach an initial determination regarding whether the defendant is a substantial danger to self or others, taking into consideration:

(i) the report described in Subsection (7); and

(ii) arguments or evidence presented by the parties.

(b) If the court determines at the initial hearing described in Subsection (8)(a) that the defendant is not a substantial danger to self or others, the defendant may be released on the defendant's current release plan.

(c)(i) If the court determines at the initial hearing described in Subsection (8)(a) that the defendant is a substantial danger to self or others, the court shall order:

(A) the defendant detained; and

(B) the executive director, or the executive director's designee, to establish a review team that meets the requirements described in Subsection 77-16a-304(1) to review the defendant's mental condition within 30 days after the day on which the court sends notice of the order.

(ii) Upon completion of the review described in Subsection (8)(c)(i)(B), the defendant shall be subject to the review and court proceedings described in Section 77-16a-304.

(d) The court shall order that the defendant be conditionally released in accordance with



the defendant's conditional release plan if the court finds that the defendant can be adequately controlled with supervision and treatment that is available and provided for in the defendant's conditional release plan.

- (9) The court clerk shall provide notice of the initial hearing described in Subsection (8)(a) in accordance with Subsection 77-16a-304(3).

Section 5. Section **77-16a-306** is amended to read:

**77-16a-306 . Continuing review -- Discharge.**

- (1)(a) ~~[Each]~~ An entity that provides treatment for a defendant committed to the custody of the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every ~~[six]~~ 12 months.

(b) If the treatment provider described in Subsection (1)(a), or a treatment provider providing treatment to a conditionally released defendant under Section 77-16a-305, finds that a defendant has recovered from the defendant's mental condition~~[- or, if]~~ or ~~that~~ the defendant has a mental condition~~[-]~~ but no longer presents a substantial danger to self or others, the treatment provider shall notify the executive director of the treatment provider's findings.

- (2)(a) Upon receipt of the notification ~~[under]~~ described in Subsection ~~[(1)]~~ (1)(b), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant.

(b) If ~~[that]~~ the review team described in Subsection (2)(a) concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, ~~[and]~~ the prosecuting attorney, and the victim that the defendant is a candidate for discharge.

(c) The court shall conduct a hearing, in accordance with Section 77-16a-302, within ~~[10 business]~~ 30 days after ~~[receipt of that notice]~~ the day on which the court receives the notice described in Subsection (2)(b).

- (3)(a) The court may not discharge ~~[an individual]~~ a defendant whose mental condition is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that, without continued medication or hospitalization, the defendant's mental condition will reoccur, making the defendant a substantial danger to self or others.

(b) Notwithstanding Subsection (3)(a), the defendant described in Subsection (3)(a) may be a candidate for conditional release in accordance with Section 77-16a-305.

Section 6. **Effective Date.**

303      This bill takes effect on May 6, 2026.