

1

Insanity Defense Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol S. Moss

Senate Sponsor:

2

LONG TITLE

3

General Description:

4

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

5

Highlighted Provisions:

6

This bill:

7

- ▶ modifies the circumstances under which a defendant may plead not guilty to a first degree or capital felony by reason of insanity;

8

- ▶ 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;

9

- ▶ 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;

10

- ▶ 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;

11

- ▶ defines terms; and

12

- ▶ makes technical changes.

13

Money Appropriated in this Bill:

14

None

15

Other Special Clauses:

16

None

17

Utah Code Sections Affected:

18

AMENDS:

19

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

20

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

21

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

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

35 **76-2-305 . Mental condition -- Use as a defense -- Influence of alcohol or other**
36 **substance voluntarily consumed.**

37 (1) As used in this section:

38 (a)(i) "Mental condition" means a mental illness or a mental disability that
39 substantially impairs an individual's mental, emotional, or behavioral functioning.
40 (ii) "Mental condition" does not include a mental abnormality that is manifested
41 solely by repeated criminal conduct, anti-social behavior, or a substance use
42 disorder.

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

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

49 [(i)] (A) schizophrenia spectrum and other psychotic disorders;
50 [(ii)] (B) bipolar I disorder;
51 [(iii)] (C) post-traumatic stress disorder; or
52 [(iv)] (D) other serious mental health conditions with psychotic features.

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

54 (A) pedophilic disorder or other paraphilic disorders;
55 (B) psychopathy;
56 (C) sociopathy;
57 (D) antisocial personality disorder or other personality disorders; or
58 (E) a diagnosis related to voluntary acute intoxication or substance use disorder.

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

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

62 (i) the nature and quality of the defendant's actions; or
63 (ii) the wrongfulness of the defendant's actions.

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

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

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

75 [(3)] (4) [The defense defined in this section] Each defense described in Subsection (2)
76 includes the defenses known as "insanity" and "diminished mental capacity."

77 [(4)] (5) A [person] defendant who asserts a defense of insanity or diminished mental
78 capacity, and who is under the influence of voluntarily consumed, injected, or ingested
79 alcohol, controlled substances, or volatile substances at the time of the alleged offense is
80 not excused from criminal responsibility on the basis of a mental condition if the alcohol
81 or substance caused, [triggered,] or substantially contributed to[the mental condition.]:
82 (a) the defendant's inability to appreciate, as described in Subsection (2)(a):

83 (i) the nature and quality of the defendant's actions; or
84 (ii) the wrongfulness of the defendant's actions; or

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

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

88 **77-16a-301 . Mental examination of defendant.**

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

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

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

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

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

99 in this section.

100 [(4)] (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.

133 [7] (11)(a) The department shall pay the expenses of an examination ordered by the
134 court under this section.
135 (b) The department shall charge the county where the prosecution is commenced for
136 travel expenses associated with an examination incurred by a defendant.
137 (c) The department shall charge the [entity commencing] county where the prosecution is
138 commenced for an examination of a defendant charged with a violation of a
139 municipal or county ordinance.

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

141 **77-16a-304 . Review after commitment.**

142 (1)(a) The executive director, or the executive director's designee, shall establish a
143 review team of at least three [qualified staff members] licensed mental health
144 professionals to review the defendant's mental condition at least every [six] 12 months.
145 (b) When establishing a review team under this Subsection (1), the executive director, or
146 the executive director's designee, shall take into account best practices for assessing
147 the defendant's risk of violence.
148 [b] (c) The review team described in [Subsection (1)(a)] this Subsection (1) shall
149 include:
150 (i) at least one forensic psychiatrist or forensic psychologist; and
151 (ii) if the defendant has an intellectual disability, at least one staff member who is a
152 designated intellectual disability professional.
153 (2) If the review team described in Subsection (1) finds that the defendant has recovered
154 from the defendant's mental condition, or, that the defendant [still has a] has not
155 recovered from the defendant's mental condition but does not present a substantial
156 danger to self or others, the executive director, or the executive director's designee, shall:
157 (a) notify the court that committed the defendant that the defendant is a candidate for
158 discharge; and
159 (b) provide the court with a report stating the facts that form the basis for the
160 recommendation.
161 (3)(a) The court shall conduct a hearing within [10 business] 30 days after [receipt of the
162 executive director's, or the executive director's designee's, notification] the day on
163 which the court receives the notification described in Subsection (2).
164 (b) The court clerk shall provide notice of the date and time of the hearing to:
165 (i) the prosecuting attorney;
166 (ii) the defendant's attorney; and

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

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

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

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

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

176 (i) has a mental condition;

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

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

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

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

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

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

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

191 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection
192 (4)(d)(i) may be a candidate for conditional release, in accordance with Section
193 77-16a-305.

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

195 **77-16a-305 . Conditional release.**

196 (1) If the review team described in Subsection 77-16a-304(1) finds that a defendant is not
197 eligible for discharge[,] in accordance with [Section 77-16a-304] Subsection
198 77-16a-304(4)(a), but that the defendant's mental condition and dangerousness can be
199 adequately controlled with proper care, medication, supervision, and treatment if the
200 defendant is conditionally released, as described in Subsection 77-16a-304(4)(b), the

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

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

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

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

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

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

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

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

234 (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

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

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

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

275 **77-16a-306 . Continuing review -- Discharge.**

276 (1)(a) [Eaeh] An entity that provides treatment for a defendant committed to the custody

277 of the department as not guilty by reason of insanity under this part shall review the

278 status of each defendant at least once every [six] 12 months.

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

285 (2)(a) Upon receipt of the notification [under] described in Subsection [(-)] (1)(b), the
286 executive director shall designate a review team, in accordance with Section
287 77-16a-304, to evaluate the defendant.

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

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

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

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

302 Section 6. **Effective Date.**

303

This bill takes effect on May 6, 2026.