
CHAPTER 49

H. B. No. 225

(Passed March 8, 1983. In effect March 30, 1983.)

INSANITY DEFENSE

By Representative Hillyard

AN ACT RELATING TO CRIMINAL LAW; PROVIDING FOR PLEAS OF "NOT GUILTY BY REASON OF INSANITY" AND "GUILTY AND MENTALLY ILL"; PROVIDING PROCEDURES FOR THE PROCESSING OF CRIMINAL CASES INVOLVING CLAIMS OF MENTALLY ILL OFFENDERS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AMENDS SECTIONS 77-13-1, 77-14-3, 77-14-4, AND 77-14-5, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980, AND SECTIONS 77-35-11 AND 77-35-21, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 14, LAWS OF UTAH 1980; ENACTS SECTION 77-35-21.5, UTAH CODE ANNOTATED 1953; AND REPEALS AND REENACTS SECTION 76-2-305, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section repealed and reenacted.

Section 76-2-305, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is repealed and reenacted to read:

76-2-305. Mental illness—Influence of alcohol or other substance voluntarily consumed.

(1) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. Mental illness shall not otherwise constitute a defense.

(2) A person who is under the influence of voluntarily consumed or injected alcohol, controlled substances, or volatile substances at the time of the alleged offense shall not thereby be deemed to be excused from criminal responsibility.

(3) Mental illness means a mental disease or defect. Mental defect may be a congenital condition or one the result of injury or a residual effect of a physical or mental disease.

Section 2. Section amended.

Section 77-13-1, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-13-1. Kinds of pleas.

There are ~~three~~ five kinds of pleas to an indictment or information:

- (1) Not guilty;
- (2) Guilty; ~~and~~
- (3) No contest~~[-]~~
- (4) Not guilty by reason of insanity; and
- (5) Guilty and mentally ill.

An alternative plea of not guilty or not guilty by reason of insanity may be entered.

Section 3. Section amended.

Section 77-14-3, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-14-3. Insanity or diminished mental capacity—Notice requirement.

(1) When a defendant proposes to offer evidence that he is not guilty ~~[by reason of mental illness pursuant to section 76-2-305]~~ as a result of insanity or that he had diminished mental capacity, he shall, at the time of arraignment or as soon thereafter as practicable, but not less than ~~[ten]~~ 30 days before the trial, file and serve the prosecuting attorney with written notice of his intention to claim such defense.

(2) If the defendant fails to meet the requirements of subsection (1), he may not introduce evidence tending to establish the defense unless the court for good cause shown shall otherwise order.

Section 4. Section amended.

Section 77-14-4, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-14-4. Mental examination of defendant—Appointment, report, testimony and compensation of examiners—Cooperation of defendant—Notice of rebuttal—Admissibility of other evidence.

(1) When the court receives notice that a defendant intends to ~~[raise the defense of mental illness, as provided in section 76-2-305, it]~~ claim that he is not guilty as the result of insanity or that he had diminished mental capacity, the court shall appoint two ~~[alienists]~~ examiners qualified in forensic mental

health to examine the defendant and investigate his mental condition. They shall testify at the instance of the court or either party in any proceeding. When the defendant is held in jail pending trial, the evaluations may be conducted in the jail.

(2) The defendant shall make himself available and fully cooperate in the examination by the court appointed examiners and any other independent examiners for the defense and the prosecuting attorney. If the defendant fails to make himself available and fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant shall be barred from presenting expert testimony relating to his defense of mental illness at the trial of the case. The examiners shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.

(3) Within 10 days after the receipt of the report from the examiners, but not later than five days before the trial of the case, or at such other time as the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental illness which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The reports of the state hospital or any other independent examiner may be admissible in evidence upon the stipulation of the prosecution and defense.

[(2)] (5) [Alienists] Examiners appointed pursuant to subsection (1) shall be allowed fees as the court determines to be just and reasonable. The fees allowed by this section shall be paid by the county where the information was filed or the indictment returned.

[(3)] (6) Nothing contained in this section shall prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses, not appointed by the court, are not entitled to compensation provided in subsection [(2)] (5) except on order of the court for good cause shown.

Section 5. Section amended.

Section 77-14-5, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-14-5. Hearing on mental condition of defendant found not guilty by reason of insanity—Commitment to state hospital—Procedure for release.

(1) When a jury renders a verdict or a court enters a finding of "not guilty by reason of [mental illness] pursuant to section 76-2-305 [insanity]", the court shall [proceed] then conduct a hearing within five days to determine [whether] if the defendant [has recovered from his mental illness] is presently mentally ill. The defense counsel and prosecutors may request further evaluations and may present testimony from those examiners. [If, after hearing, the defendant is determined to be mentally ill, the court shall order him committed to the Utah state hospital. The defendant shall not be released from confinement therein until the court which committed the defendant shall, after hearing, find that the defendant has recovered from his mental illness. Notice shall be given to the prosecuting attorney of the hearing.]

(2) After the hearing and upon consideration of the record, if the court finds by clear and convincing evidence that the defendant is still mentally ill and because of that mental illness presents a substantial danger to himself or others, the court shall order him committed to the Utah state hospital. The defendant shall not be released from confinement therein until the court which committed the defendant shall, after hearing, find that the defendant has recovered from his mental illness. Notice shall be given to the prosecuting attorney of the hearing. For purposes of this section, a person affected with a mental illness which is in remission as a result of medication or hospitalization shall remain committed to the Utah state hospital if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, thereby making the person a substantial danger to himself or others.

~~[(2)]~~ (3) A defendant committed to the Utah state hospital pursuant to subsection ~~[(4)]~~ (2) may apply, not sooner than six months from the date of the commitment, to the district court of the county from which he was committed, for an order of release on the grounds that he has recovered from his mental illness. At any time that the defendant has recovered from his mental illness, the clinical director of the state hospital shall certify that fact to the court. The court shall conduct a hearing within ten working days of the receipt of the clinical director's report. If the finding is adverse to the defendant, he shall not be permitted another hearing more often than once each year, unless the court otherwise orders. In such hearings, the burden of proof is on the applicant.

Section 6. Section amended.

Section 77-35-11, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1980, is amended to read:

77-35-11. Rule 11—Pleas.

(a) Upon arraignment, except in case of an infraction, a defendant shall be represented by counsel, unless the defendant waives counsel in open court, and shall not be required to plead until he has had a reasonable time to confer with counsel.

(b) A defendant may plead not guilty, guilty, ~~[or]~~ no contest, not guilty by reason of insanity or guilty and mentally ill. A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(c) A defendant may plead no contest only with the consent of the court.

(d) When a defendant enters a plea of not guilty, the case shall forthwith be set for trial. Defendants unable to make bail shall be given a preference for an early trial. In non-felony cases the court shall advise the defendant, or his counsel, of the requirements for making a written demand for a jury trial.

(e) The court may refuse to accept a plea of guilty or no contest and shall not accept such a plea until the court has made the findings:

(1) That if the defendant is not represented by counsel he has knowingly waived his right to counsel and does not desire counsel;

(2) That the plea is voluntarily made;

(3) That the defendant knows he has rights against compulsory self-incrimination, to a jury trial and to confront and cross-examine in open court the witnesses against him, and that by entering the plea he waives all of those rights;

(4) That the defendant understands the nature and elements of the offense to which he is entering the plea; that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt; and that the plea is an admission of all those elements;

(5) That the defendant knows the minimum and maximum sentence that may be imposed upon him for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences; and

(6) Whether the tendered plea is a result of a prior plea discussion and plea agreement and if so, what agreement has been reached.

If it appears that the prosecuting attorney or any other party has agreed to request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of other charges, the same shall be approved by the court. If recommendations as to sentence are allowed by the court, the court shall advise the defendant personally that any recommendation as to sentence is not binding on the court.

(f) The judge shall not participate in plea discussions prior to any agreement being made by the prosecuting attorney, but once a tentative plea agreement has been reached which contemplates entry of a plea in the expectation that other charges will be dropped or dismissed, the judge, upon request of the parties, may permit the disclosure to him of such tentative agreement and the reasons therefor in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether he will approve the proposed disposition. Thereafter, if the judge decides that final disposition should not be handled in conformity with the plea agreement, he shall so advise the defendant and then call upon the defendant to either affirm or withdraw his plea.

Section 7. Section amended.

Section 77-35-21, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1980, is amended to read:

77-35-21. Rule 21—Verdict.

(a) The verdict of the jury shall be either "guilty" or "not guilty," "not guilty by reason of insanity," "guilty and mentally ill," or "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill" provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that he was ~~mentally ill~~ insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of ~~mental illness~~ insanity."

(b) The verdict shall be unanimous. It shall be returned by the jury to the judge in open court and in the presence of the defendant and counsel. If the

defendant voluntarily absents himself, the verdict may be received in his absence.

(c) If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to any defendant as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(d) When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted shall be stated separately in the verdict.

(e) The jury may return a verdict of guilty to the offense charged or to any offense necessarily included in the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(f) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or may be polled at the court's own instance. If, upon the poll, there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. If the verdict is unanimous, it shall be recorded.

(g) If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, he shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

Section 8. Section enacted.

Section 77-35-21.5, Utah Code Annotated 1953, is enacted to read:

77-35-21.5. Plea claiming mental illness or insanity—Procedure—Verdict—Sentence—Commitment—Discharge—Probation.

(1) Upon a plea of guilty and mentally ill being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine the claim of mental illness of the defendant. Mental illness, for this purpose, is determined by the definition stated in section 64-7-28. The court may order the defendant to be evaluated at the Utah state hospital or any other suitable facility, and may receive the evidence of any private or public expert witness whose evidence is offered by the defendant or the prosecutor. A defendant who tenders a plea of "guilty and mentally ill" shall be examined first by the trial judge in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty and mentally ill is a plea of guilty and not a contingent plea. If the defendant is thereafter found not to be mentally ill, a guilty plea otherwise lawfully made remains a valid plea of guilty and the defendant shall be sentenced as any other offender. If the court concludes that the defendant is currently mentally ill, applying the standards set forth in this section, the defendant's plea shall be accepted and he shall be sentenced as a mentally ill offender.

(2) If a defendant at trial asserts a defense of "not guilty by reason of insanity," the court shall instruct the jury that they may find the defendant guilty, not guilty, not guilty by reason of insanity, guilty and mentally ill, guilty of a lesser offense, or guilty of a lesser offense due to mental illness but

not such illness as would warrant full exoneration. Upon a verdict of guilty and mentally ill to the offense charged, or any lesser offense, the court shall hold a hearing as provided in this section, and if the court finds that the defendant is currently mentally ill, it shall sentence the defendant as a mentally ill offender.

(3) If the defendant is found guilty and mentally ill, the court shall impose any sentence which could be imposed pursuant to law upon a defendant who is convicted of the same offense. Before sentencing, the court shall conduct a hearing to determine the defendant's present mental state.

(4) The court shall in its sentence order hospitalization at the Utah state hospital or other suitable facility if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

(a) The defendant has a mental illness as defined by section 64-7-28 (1);

(b) Because of his mental illness the defendant poses an immediate physical danger to others or self, which may include jeopardizing his own or others safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing and shelter, if placed on probation;

(c) The defendant 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 costs and benefits of treatment;

(d) There is no appropriate treatment alternative to a court order of hospitalization; and

(e) The Utah state hospital or other suitable facility can provide the defendant with treatment, care, and custody that is adequate and appropriate to the defendant's conditions and needs.

(5) When the defendant is not already under an order of hospitalization at the time of the hearing, the court shall order hospitalization, if appropriate, for a period not to exceed six months without benefit of a review hearing. Hospitalization may be ordered at the Utah state hospital or other suitable facility as the court deems appropriate. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for hospitalization may be made for an indeterminate period if the court finds by clear and convincing evidence that the required conditions of subsection (4) of this section will last for an indeterminate period.

(6) A defendant committed to the Utah state hospital or other suitable facility for an indeterminate period shall be entitled to petition the sentencing court for a rehearing at six month intervals, and the confinement facility shall submit a report to the sentencing court at twelve month intervals.

(7) The period of commitment to the Utah state hospital or other suitable facility, as provided for in this section, shall in no circumstance be longer than the maximum sentence imposed by the court.

(8) When the Utah state hospital or other suitable facility proposes to discharge a defendant prior to the expiration of sentence, the institution shall transmit to the board of pardons a report on the condition of the defendant which includes the clinical facts, the diagnosis, the course of treatment, and the prognosis for the remission of symptoms, the potential for recidivism and for the danger to himself or the public, and recommendations for future treatment. The board of pardons shall direct that the defendant serve any or all of the unexpired term of the sentence at the Utah state prison, or place the defendant on parole. In the event that the board of pardons, pursuant to law or administrative rules, should consider for parole any defendant who has been adjudged guilty and mentally ill, the board shall consult with the treating facility or agency and an additional report on the condition of the defendant may be filed with the board. Pending action of the board, the defendant shall remain at the institution at which he is hospitalized. If the defendant is placed on parole, treatment shall, upon the recommendation of the hospital facility, be made a condition of parole, and failure to continue treatment or other condition of parole except by agreement with the designated facility and the board of pardons shall be basis for initiating parole violation hearings. The period of parole shall not be for less than five years or until the expiration of the defendant's sentence, whichever comes first, and shall not be reduced without consideration by the board of pardons of a current report on the mental health status of the offender.

(9) If a defendant who pleads or is found guilty and mentally ill is placed on probation under the jurisdiction of the sentencing court, the trial judge shall make treatment a condition of probation if the defendant is shown to be treatable and facilities exist for treatment of the offender in a probation status. Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment or other condition of probation, except by agreement with the treating agency and the sentencing court, shall be a basis for the initiation of probation violation hearings. The period of probation shall not be for less than five years or until the expiration of the defendant's sentence, whichever comes first, and shall not be reduced by the sentencing court without consideration of a current report on the mental health status of the offender. Treatment or other care may be provided by an agency of the division of mental health, or with the approval of the sentencing court, or by any other mental health provider. A report shall be filed with the probation officer and the sentencing court every three months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report. A motion on a petition to discontinue probation shall not be heard more than once every six months.

Section 9. Effective date.

This act shall take effect upon approval.

Approved March 30, 1983..
