

Part 1

Plea and Verdict of Guilty with a Mental Illness

77-16a-101 Definitions.

As used in this chapter:

- (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.
- (2) "Department" means the Department of Human Services.
- (3) "Executive director" means the executive director of the Department of Human Services.
- (4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.
- (5) "Mental illness" is as defined in Section 76-2-305.
- (6) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.
- (7) "UDC" means the Department of Corrections.

Amended by Chapter 366, 2011 General Session

77-16a-102 Jury instructions.

- (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that it may find the defendant:
 - (a) guilty;
 - (b) guilty with a mental illness at the time of the offense;
 - (c) guilty of a lesser offense;
 - (d) guilty of a lesser offense with a mental illness at the time of the offense;
 - (e) not guilty by reason of insanity; or
 - (f) not guilty.
- (2)
 - (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant had a mental illness at the time of the offense.
 - (b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty with a mental illness at the time of the offense."
 - (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."
 - (d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.

- (e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.
- (3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.
- (4)
 - (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return a special verdict.
 - (b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

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77-16a-103 Plea of guilty with a mental illness at the time of the offense.

- (1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.
- (2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.
- (3)
 - (a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense 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 with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.
 - (b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.
- (4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section 77-16a-104.
- (5)
 - (a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.
 - (b) Travel expenses shall be paid by the county where prosecution is commenced.
 - (c) Expenses of examination for defendants charged with violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

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77-16a-104 Verdict of guilty with a mental illness -- Hearing to determine present mental state.

- (1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.
- (2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.
- (3) If the court finds by clear and convincing evidence that the defendant currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental illness and who is convicted of the same offense, and:
 - (a) commit the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:
 - (i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and
 - (ii) the court finds by clear and convincing evidence that:
 - (A) because of the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's 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; and
 - (B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;
 - (b) order probation in accordance with Section 77-16a-201; or
 - (c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.
- (4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall, before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.
- (5) If the court finds that the defendant does not currently have a mental illness, the court shall sentence the defendant as it would any other defendant.
- (6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection 77-16a-103(5).

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