

**Part 3**  
**Defendants Pleading Not Guilty by Reason of Insanity**

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

- (1)
- (a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(1)(a), the court shall order the Department of Human Services to examine the defendant and investigate the defendant's mental condition.
  - (b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in any proceeding in which the testimony is otherwise admissible.
  - (c) Pending trial, unless the court or the executive director directs otherwise, the defendant shall be retained in the same custody or status the defendant was in at the time the examination was ordered.
- (2)
- (a) The defendant shall be available and shall fully cooperate in the examination by the department and any other independent examiners for the defense and the prosecuting attorney.
  - (b) If the defendant fails to be available and to fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to the defendant's defense of mental illness at the trial of the case.
  - (c) The department 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 receipt of the report from the department, but not later than five days before the trial of the case, or at any other time 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 any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.
- (5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).
- (6) This section does not require the admission of evidence not otherwise admissible.
- (7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

Amended by Chapter 206, 2009 General Session

**77-16a-302 Persons found not guilty by reason of insanity -- Disposition.**

- (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.
- (2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:
  - (a) the defendant has a mental illness; and
  - (b) because of that mental illness the defendant presents a substantial danger to self or others.
- (3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

**77-16a-303 Court determinations.**

After entry of judgment of not guilty by reason of insanity, the court shall:

- (1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and
- (2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Enacted by Chapter 171, 1992 General Session

**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 to review the defendant's mental condition at least every six months.
  - (b) The team described in Subsection (1)(a) shall include:
    - (i) at least one psychiatrist; 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 illness, or, that the defendant still has a mental illness 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 days after receipt of the executive director's, or the executive director's designee's, notification.
  - (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 if the court finds that the defendant:
    - (i) no longer has a mental illness; or
    - (ii) has a mental illness, but no longer presents a substantial danger to self or others.
  - (b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:
    - (i) has a mental illness;
    - (ii) is a substantial danger to self or others; and
    - (iii) can be controlled adequately if conditionally released with 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 illness;
    - (ii) is a substantial danger to self or others; and
    - (iii) cannot adequately be controlled if conditionally released on supervision.
  - (d)
    - (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental illness 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 illness 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.

Amended by Chapter 366, 2011 General Session

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

- (1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.
- (2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.
- (3) The executive director, or his 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. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.
- (4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.
- (5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Amended by Chapter 285, 1993 General Session

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

- (1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental illness, or, if the defendant has a mental illness, no longer presents a substantial danger to self or others, it shall notify the executive director of its findings.
- (2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.
- (3) The court may not discharge an individual whose mental illness 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 illness will reoccur, making the defendant a substantial danger to self or others.

Amended by Chapter 366, 2011 General Session