Effective 5/3/2023

Chapter 16a
Commitment and Treatment of Individuals with a Mental Condition

Part 1
Plea and Verdict of Guilty with a Mental Condition

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 Health and Human Services.
(3) "Executive director" means the executive director of the Department of Health and Human Services.
(4) "Forensic evaluator" means a licensed mental health professional who is:
  (a) not involved in the defendant's treatment; and
  (b) trained and qualified to conduct a guilty with a mental condition evaluation.
(5) "Mental condition" means the same as that term is defined in Section 76-2-305.
(6) "Mental disability" means the same as that term is defined in Section 76-2-305.
(7) "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.
(8) "Mental health supervision" includes regular and periodic activities including:
  (a) the review of a defendant's assessment, diagnostic formulation, individual service plan development, and progress toward completion of care;
  (b) identification of barriers to a defendant's care, assistance in removing barriers to a defendant's care, continuation of services to a defendant, authorization of care for a defendant, and the observation of the delivery of clinical care to a defendant; and
  (c) the provision of an update report to a court as required under Subsection 77-16a-103(5)(g).
(9) "Mental illness" means the same as that term is defined in Section 76-2-305.
(10) "Offender with a mental condition" means an individual who has been adjudicated guilty with a mental condition.
(11) "Secure setting" means a jail, prison, or locked inpatient medical facility approved by the department.
(12) "UDC" means the Department of Corrections.

Amended by Chapter 177, 2024 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 the jury may find the defendant:
  (a) guilty;
  (b) guilty with a mental condition at the time of the offense;
  (c) guilty of a lesser offense;
  (d) guilty of a lesser offense with a mental condition 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(2)(a), or when the evidence raises the issue and either party requests the instruction, the court shall instruct the jury that if the jury finds a defendant guilty by proof beyond a reasonable doubt of a charged offense or lesser included offense, the jury shall also return a special verdict indicating whether the jury finds that the defendant had a mental condition 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 condition at the time of the offense, the jury shall return the general verdict of "guilty with a mental condition 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 condition at the time of the offense, the jury shall return the general verdict of "guilty of a lesser offense with a mental condition 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 condition at the time of the offense, the jury shall return a verdict of "guilty" of the offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental condition 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 the jury's general verdict.

(3)

(a) In determining whether a defendant should be found guilty with a mental condition at the time of the offense, the court shall instruct the jury that the standard of proof applicable to a finding of mental condition is by a preponderance of the evidence.

(b) The court shall also instruct the jury 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 an 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(2)(b), the jury shall, in addition to the jury's 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 the jury's general verdict.

Amended by Chapter 184, 2023 General Session

77-16a-103 Plea of guilty with a mental condition-- Procedures -- Sentencing -- Reduction -- Costs.

(1)

(a)

(i) If a defendant wishes to enter a plea of guilty with a mental condition, the parties may stipulate as to:

(A) whether the defendant had a mental condition at the time of the commission of the offense; and

(B) whether the defendant could benefit from supervision or treatment.

(ii) If the parties stipulate as described in Subsection (1)(a)(i), the court shall enter findings consistent with the parties' stipulation if the stipulation is supported by sufficient evidence.

(b) If the parties do not stipulate to Subsection (1)(a)(i), the court shall hold a hearing and determine, by clear and convincing evidence:
(i) whether the defendant had a mental condition at the time of the commission of the offense; and
(ii) whether the defendant could benefit from supervision or treatment.
(c) After reviewing the stipulation described in Subsection (1)(a)(i) or conducting a hearing under Subsection (1)(b):
(i) if the court finds that the defendant had a mental condition at the time of the offense, the court shall accept the defendant's plea of guilty with a mental condition; or
(ii) if the court finds that the defendant did not have a mental condition at the time of the offense, the court may not accept the defendant's plea of guilty with a mental condition.

(2)
(a) If a defendant wishes to enter a plea of guilty with a mental condition for a felony offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the hearing described in Subsection (1)(b), the court may order the defendant to submit to an examination, which may be conducted only by a forensic evaluator appointed by the department, to determine:
(i) whether the defendant had a mental condition at the time of the commission of the offense;
(ii) whether the defendant could benefit from supervision or treatment; or
(iii) whether the defendant currently is competent to enter a plea.
(b)
(i) If a defendant wishes to enter a plea of guilty with a mental condition for a misdemeanor offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the hearing described in Subsection (1)(b), the court may order the defendant to submit to an examination by a forensic evaluator.
(ii) The examination shall determine:
(A) whether the defendant had a mental condition at the time of the commission of the offense;
(B) whether the defendant could benefit from supervision or treatment; or
(C) whether the defendant currently is competent to enter a plea.
(c) Before an examination is conducted pursuant to Subsection (1)(b) or this Subsection (2):
(i) the petitioner or other party, as directed by the court or requested by the department, shall provide to the forensic evaluation provider nonmedical information and materials relevant to a treatment assessment, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments; and
(ii) for purposes of a guilty with a mental condition evaluation, a custodian of mental health records pertaining to the defendant, including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:
(A) with the defendant's consent, a forensic evaluation provider or the department on the department's request; or
(B) pursuant to an order of the court, a forensic evaluation provider.

(3)
(a) If a defendant relies on a private mental health evaluation in support of the defendant's plea of guilty with a mental condition and the parties do not stipulate to Subsection (1)(a)(i), upon the request of the prosecutor before the hearing described in Subsection (1)(b), the court shall order the defendant to submit to an examination by:
(i) the department if the offense is a felony; or

(ii) the department or a forensic evaluator if the offense is a misdemeanor.

(b) The petitioner or other party, as directed by the court or requested by the department, shall provide to the private mental health evaluation provider nonmedical information and materials relevant to a treatment assessment, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) For purposes of a guilty with a mental condition evaluation, a custodian of mental health records pertaining to the defendant, including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:

(i) with the defendant's consent, a private mental health evaluation provider or the department on the department's request; or

(ii) pursuant to an order of the court, a private mental health evaluation provider.

(4) If a court finds that a defendant was guilty with a mental condition at the time of the offense in accordance with Subsection (1)(c)(i) but would not benefit from available supervision or treatment, the court shall hold a sentencing hearing within 45 days of the entry of the defendant's plea of guilty with a mental condition.

(5)

(a) If a court finds that a defendant had a mental condition at the time of the commission of the offense, the defendant could benefit from supervision or treatment, and has entered a plea of guilty with a mental condition in accordance with Subsection (1)(c)(i), the court:

(i) shall order:

(A) the department to provide a treatment assessment of the defendant and to submit to the court treatment recommendations for the defendant; or

(B) the defendant to arrange for a treatment assessment of the defendant with a private provider and for the private provider to submit to the court treatment recommendations for the defendant;

(ii) shall schedule a treatment review hearing within 30 days after the day on which the court entered the plea of guilty with a mental condition; and

(iii) may defer sentencing for up to one year in accordance with Subsection (6), if the defendant consents to a deferred sentence.

(b) The petitioner or other party, as directed by the court or requested by the department, shall provide to the treatment assessment provider nonmedical information and materials relevant to a treatment assessment, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) For purposes of a guilty with a mental condition treatment assessment, a custodian of mental health records pertaining to the defendant, including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:

(i) with the defendant's consent, a treatment assessment provider or the department on the department's request; or

(ii) pursuant to an order of the court, a treatment assessment provider.

(d) At the treatment review hearing described in Subsection (5)(a)(ii), the court shall:

(i) consider all available diagnosis, treatment, and supervision recommendations;

(ii) if a party does not agree with treatment recommendations issued by the department under Subsection (5)(a)(i)(A), hold a hearing on the issue of the department's recommendations and make appropriate modifications to the recommendations if necessary; and

(iii) order the defendant to comply with all treatment and supervision recommendations that are in the best interest of the defendant and public safety.

(e)

(i) In determining treatment and supervision recommendations under Subsection (5)(d), the court may order the defendant to be placed in a secure setting as described in Subsections (5)(e)(ii) and (iii) if the court finds that the placement would be in the best interest of the defendant, a victim of the defendant, or public safety.

(ii)

(A) If the offense is a class C misdemeanor, the court may not place the defendant in a secure setting for more than 90 days.

(B) If the offense is a class B misdemeanor, the court may not place the defendant in a secure setting for more than six months.

(C) If the offense is a class A misdemeanor or a felony, the court may place the defendant in a secure setting for up to one year.

(iii) The court shall, before making a determination as to a secure setting placement, notify the executive director of the proposed placement and provide the department with an opportunity to:

(A) evaluate the defendant; and

(B) make a recommendation regarding placement to the court.

(f) If the court determines that the defendant is eligible for supervised release as part of the defendant's treatment and supervision recommendations under Subsection (5)(d), except as provided in Section 76-3-406, the court may order:

(i) if the offense is a felony:

(A) supervision by the Division of Adult Probation and Parole created in Section 64-14-202, or a third party that is approved by the Division of Adult Probation and Parole, for a period of up to one year in accordance with the applicable supervision provisions described in Title 64, Chapter 13, Department of Corrections - State Prison, and Title 64, Chapter 14, Adult Probation and Parole; and

(B) mental health supervision by:

(I) the department or a local mental health authority; or

(II) if the court determines that it is appropriate, a public or private entity that provides mental or behavioral health services and is approved by the; or

(ii) if the offense is a misdemeanor, mental health supervision by:

(A) a local mental health authority; or

(B) if the court determines that it is appropriate, a public or private entity that provides mental or behavioral health services and is approved by the department.

(g)

(i) After the initial review hearing described in Subsection (5)(a), the court shall hold periodic review hearings approximately every 90 days, the frequency of which may be modified by the court.

(ii) At a review hearing described in Subsection (5)(g)(i):

(A) the department or the department's designee shall report on the progress of the defendant, provide recommendations for the defendant's future care, treatment, and secure or unsecure placement, and advise the court on the medical necessity of treatments for the defendant;

(B) the court shall review the status of the defendant and determine whether any changes are needed to the defendant's supervision or treatment plan; and

(C) a party may request, if the party has a good faith basis, that the court review or change the defendant's placement within a secure or non-secure setting.

(h) If a defendant is willfully non-compliant with the treatment or supervision ordered by the court under this Subsection (5), the court shall hold an order to show cause hearing to determine whether the court should:

(i) proceed with sentencing under Subsection (6);

(ii) change the defendant's placement to a secure setting;

(iii) impose another sanction; or

(iv) take no action.

(6)

(a) The court shall defer sentencing for a defendant who has pleaded guilty with a mental condition as described in Subsection (5) until:

(i) the court determines, after an order to show cause hearing or a review hearing as described in Subsection (5), that:

(A) the defendant is willfully non-compliant with treatment or supervision and is unlikely to become compliant with further ordered treatment or supervision; or

(B) the defendant has reached the maximum benefit of treatment and supervision; or

(ii) one year has elapsed after the day on which the court entered the defendant's plea of guilty with a mental condition.

(b) At the sentencing hearing, the court shall:

(i) consider all treatment and supervision that has occurred before the sentencing hearing in the defendant's case;

(ii) credit any time the defendant has spent in a mental health facility or other residential treatment facility or a secure facility against the defendant's sentence;

(iii) consider victim input;

(iv) consider the best interests of the defendant, including which sentence will help prevent the defendant:

(A) from losing the defendant's ability to control the defendant's state of mental health; and

(B) from committing additional criminal conduct related to the defendant's mental condition;

(v) consider the best interest of public safety; and

(vi) consider any other relevant factor or circumstance.

(7)

(a) Except as provided in Subsection (7)(b), after a defendant who has been sentenced under Subsection (6) has completed the defendant's sentence and any probation or parole:

(i) notwithstanding the contrary provisions in Subsection 76-3-402(4) or 76-3-406(1), the court has jurisdiction to enter a judgment of conviction and shall reduce the judgment of conviction for the offense by two degrees from the original offense; and

(ii) notwithstanding the contrary provisions in Subsection 76-3-402(4) or 76-3-406(1), if the prosecuting attorney specifically agrees in writing or on the court record at any time, the court has jurisdiction to consider and enter a judgment of conviction and may enter a judgment of conviction for the offense that is reduced by up to three degrees from the original offense.

(b) If a defendant's probation is revoked and any suspended sentence is imposed, the defendant may not receive a reduction under this Subsection (7).

(8)

(a)

(i) Except as provided in Subsection (8)(a)(iv), when the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department when not paid for by the defendant's insurance.
(ii) Travel expenses shall be paid by the county where prosecution is commenced.
(iii) Expenses of examination for a defendant charged with a violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.
(iv) The department is not responsible for payment for an evaluation described in Subsection (3)(a)(ii) that is conducted by a forensic evaluator who is privately retained by a party.

(b)
(i) Provisions in this part for the support at public expense of a defendant with a mental condition do not release an insurer of a defendant with a mental condition from liability for the care or treatment of the defendant with a mental condition.
(ii) The department is authorized to collect amounts spent on a defendant with a mental condition from an insurer of the defendant with a mental condition.
(iii) A health insurance company may not deny coverage for court-ordered treatment or supervision of a defendant with a mental condition solely based on the fact that the treatment or supervision is ordered by a court if the treatment or supervision is medically necessary and would otherwise be a covered benefit under the defendant's insurance plan.

(9) A guilty with a mental condition evaluation conducted under this section is also subject to the procedural requirements of Subsections 77-15-5(8) through (11) and 77-15-6(4)(a).

Amended by Chapter 214, 2025 General Session

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

(1) Upon a verdict of guilty with a mental condition for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

(2)
(a) 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.
(b) The defendant may be placed in the Utah State Hospital for the examination described in Subsection (2)(a) only upon approval of the executive director.

(3) If the court finds by clear and convincing evidence that the defendant currently has a mental condition, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental condition 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 condition 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 ensure 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 condition, 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(8).

Amended by Chapter 184, 2023 General Session

Part 2
Disposition of Defendants Found Guilty with a Mental Condition

77-16a-201 Probation.

(1)

(a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental condition at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental condition.

(2) The period of probation for a felony offense committed by a defendant who has been found guilty with a mental condition at the time of the offense may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3)

(a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.
(5) The court may not release an offender with a mental condition into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:
  (a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or
  (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.
(6) An offender with a mental condition who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Amended by Chapter 184, 2023 General Session

77-16a-202 Person found guilty with a mental condition-- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing an offender with a mental condition to the department under Subsection 77-16a-104(3)(a) or in a felony case under Subsection 77-16a-103(6), the court shall:
  (a) sentence the offender to a term of imprisonment and order that the offender be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or
  (b) order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court shall sentence the offender. A retention of jurisdiction under this Subsection (1)(b) shall be specified in a court order.
(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental condition who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.
(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.
(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities.

Amended by Chapter 184, 2023 General Session
Amended by Chapter 330, 2023 General Session

77-16a-203 Review of offenders with a mental condition committed to department -- Recommendations for transfer to Department of Corrections.

(1)
(a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental condition committed to it in accordance with Section 77-16a-202, at least once every six months.
(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 26B-6-401.

(2) At the conclusion of the review team's evaluation, the review team described in Subsection (1) shall make a report to the executive director:
(a) regarding the offender's:
(i) current mental condition;
(ii) progress since commitment; and
(iii) prognosis; and
(b) that includes a recommendation regarding whether the offender with a mental condition should be:
(i) transferred to UDC; or
(ii) remain in the custody of the department.

(3)
(a) The executive director shall notify the UDC medical administrator and the board's mental health adviser that an offender with a mental condition is eligible for transfer to UDC if the review team finds that the offender:
(i) no longer has a mental condition; or
(ii) has a mental condition and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and
(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.
(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:
(i) all available clinical facts;
(ii) the diagnosis;
(iii) the course of treatment received at the mental health facility;
(iv) the prognosis for remission of symptoms;
(v) the potential for recidivism;
(vi) an estimation of the offender's dangerousness, either to self or others; and
(vii) recommendations for future treatment.

Amended by Chapter 184, 2023 General Session
Amended by Chapter 330, 2023 General Session

77-16a-204 UDC acceptance of transfer of persons found guilty with a mental condition -- Retransfer from UDC to department for admission to the Utah State Hospital.

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.
(2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental condition with adequate mental health treatment.
(3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.
(4) In the event that the department and UDC do not agree on the transfer of an offender with a mental condition, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.
(5) UDC shall notify the board whenever an offender with a mental condition is transferred from the department to UDC.
(6) When an offender with a mental condition sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 26B-5-372.
(7) Any individual readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.
(8) An offender with a mental condition who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Amended by Chapter 184, 2023 General Session
Amended by Chapter 330, 2023 General Session

77-16a-205 Parole.
(1) When an offender with a mental condition who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.
(2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental condition, including:
  (a) all available clinical facts;
  (b) the diagnosis;
  (c) the course of treatment received at the mental health facility;
  (d) the prognosis for remission of symptoms;
  (e) potential for recidivism;
  (f) an estimation of the dangerousness of the offender with a mental condition either to self or others; and
  (g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the offender with a mental condition on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4)

(a) The Division of Adult Probation and Parole created in Section 64-14-202 shall monitor the status of an offender with a mental condition who has been placed on parole.

(b) UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

(5) The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Amended by Chapter 214, 2025 General Session

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(2)(a), the court shall order the department 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 a 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 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 a mental condition 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 described in Subsection (2)(c) 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 a mental condition, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The report of another independent examiner is admissible as evidence upon stipulation of the prosecution and defense.
(5)
  (a) This section does not prevent a party from producing other testimony as to the mental condition of the defendant.
  (b) An expert witness who is not appointed by the court is not entitled to compensation under Subsection (7).
(6) This section does not require the admission of evidence not otherwise admissible.
(7)
  (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 the prosecution for an examination of a defendant charged with a violation of a municipal or county ordinance.

Amended by Chapter 184, 2023 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 condition. 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 condition; and
  (b) because of that mental condition 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 26B, Chapter 5, Health Care -- Substance Use and Mental Health.

Amended by Chapter 184, 2023 General Session
Amended by Chapter 330, 2023 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 the person 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.

Amended by Chapter 302, 2025 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 condition, or, that the defendant still has a 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 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 condition; or
(ii) has a mental condition, 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 condition;
(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 condition;
(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 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.

Amended by Chapter 184, 2023 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 the defendant's mental condition and dangerousness can be controlled with proper care, medication, supervision, and treatment if the defendant is conditionally released, 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 executive director, or the executive director's 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 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. 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 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) 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 184, 2023 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 condition, or, if the defendant has a mental condition, 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) 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 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.

Amended by Chapter 184, 2023 General Session