

**AMENDMENTS TO GUILTY AND MENTALLY
ILL**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Gladwell

This act modifies the Code of Criminal Procedure, creating a new plea of "guilty and mentally ill at the time of the offense" and setting standards for jury instructions on mental defenses.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 77-13-1, as last amended by Chapter 49, Laws of Utah 1983
- 77-16a-102, as enacted by Chapter 171, Laws of Utah 1992
- 77-16a-103, as enacted by Chapter 171, Laws of Utah 1992
- 77-16a-201, as last amended by Chapter 209, Laws of Utah 2001

REPEALS:

- 77-16-1, as enacted by Chapter 15, Laws of Utah 1980
- 77-16-2, as last amended by Chapter 227, Laws of Utah 1993
- 77-16-3, as enacted by Chapter 15, Laws of Utah 1980
- 77-16-4, as enacted by Chapter 15, Laws of Utah 1980
- 77-16-5, as last amended by Chapter 13, Laws of Utah 1994

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

Section 1. Section **77-13-1** is amended to read:

77-13-1. Kinds of pleas.

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

- (1) Not guilty;
- (2) Guilty;
- (3) No contest;
- (4) Not guilty by reason of insanity; and
- (5) Guilty and mentally ill at the time of the offense.

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

Section 2. Section **77-16a-102** is amended to read:

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:

~~[(1)]~~ (a) guilty;

~~[(2)]~~ not guilty;

~~[(3)]~~ not guilty by reason of insanity;

~~[(4)]~~ (b) guilty and mentally ill at the time of the offense;

~~[(5)]~~ (c) guilty of a lesser offense;

~~[(6)]~~ (d) guilty of a lesser offense and mentally ill ~~[- or]~~ at the time of the offense;

~~[(7)]~~ guilty of a lesser offense due to mental illness, but not a mental illness that warrants full exoneration.]

(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 Section 76-5-205.5, 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 was mentally ill 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 was mentally ill at the time of the offense, it shall return the general verdict of "guilty and mentally ill 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 was mentally ill at the time of the offense, it shall return the general verdict of "guilty of a lesser offense and mentally ill 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 was mentally ill 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 the defendant mentally ill 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 and mentally ill 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.

Section 3. Section **77-16a-103** is amended to read:

77-16a-103. Plea of guilty and mentally ill.

(1) Upon a plea of guilty and mentally ill 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 is currently mentally ill.

(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 and mentally ill 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 and mentally ill 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 be currently mentally ill, that plea remains a valid plea of guilty and mentally ill at the time of the offense, and the defendant shall be sentenced as any other offender.

(4) If the court concludes that the defendant is currently mentally ill his plea shall be

accepted and he 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.

Section 4. Section **77-16a-201** is amended to read:

77-16a-201. Probation.

(1) (a) ~~When~~ In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty and mentally ill 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 ~~a mentally ill~~ an offender who has been convicted of ~~a capital felony on probation~~ the felony offenses listed in Section 76-3-406 on probation, regardless of whether he is or has been mentally ill.

(2) The period of probation for a felony offense committed by a person who has been found guilty and mentally ill at the time of the offense may be for no less than five years~~[-, or until the expiration of the defendant's sentence, whichever occurs first]~~. Probation for those offenders 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 a mentally ill offender into the community, as a part of probation, if it finds by clear and convincing evidence that he:

(a) poses an immediate physical danger to himself or others, including jeopardizing his 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) A mentally ill offender 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.

Section 5. Repealer.

This act repeals:

Section 77-16-1, Grounds for ordering examination.

Section 77-16-2, Appointment of examining alienists -- Report -- Additional evidence by defendant -- Findings -- Sentencing -- Compensation of alienists.

Section 77-16-3, Care and treatment of persons committed.

Section 77-16-4, Defendant incapable of treatment at state hospital -- Hearing -- Proceeding.

Section 77-16-5, Recovery of committed person -- Certification to Board of Pardons and Parole.