

1 **AMENDMENTS TO GUILTY AND MENTALLY**

2 **ILL**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Gladwell**

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

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

10 AMENDS:

11 **77-13-1**, as last amended by Chapter 49, Laws of Utah 1983

12 **77-16a-102**, as enacted by Chapter 171, Laws of Utah 1992

13 **77-16a-103**, as enacted by Chapter 171, Laws of Utah 1992

14 **77-16a-201**, as last amended by Chapter 209, Laws of Utah 2001

15 REPEALS:

16 **77-16-1**, as enacted by Chapter 15, Laws of Utah 1980

17 **77-16-2**, as last amended by Chapter 227, Laws of Utah 1993

18 **77-16-3**, as enacted by Chapter 15, Laws of Utah 1980

19 **77-16-4**, as enacted by Chapter 15, Laws of Utah 1980

20 **77-16-5**, as last amended by Chapter 13, Laws of Utah 1994

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

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

23 **77-13-1. Kinds of pleas.**

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

25 (1) Not guilty;

26 (2) Guilty;

27 (3) No contest;



- 28 (4) Not guilty by reason of insanity; and
- 29 (5) Guilty and mentally ill at the time of the offense.

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

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

32 **77-16a-102. Jury instructions.**

33 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall
34 instruct the jury that it may find the defendant:

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

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

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

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

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

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

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

43 (e) not guilty by reason of insanity; or

44 (f) not guilty.

45 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts
46 special mitigation reducing the level of an offense pursuant to Section 76-5-205.5, or when the
47 evidence raises the issue and either party requests the instruction, the jury shall be instructed that
48 if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser
49 included offense, it shall also return a special verdict indicating whether it finds that the defendant
50 was mentally ill at the time of the offense.

51 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a
52 reasonable doubt, and by special verdict finds the defendant was mentally ill at the time of the
53 offense, it shall return the general verdict of "guilty and mentally ill at the time of the offense."

54 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable
55 doubt, and by special verdict finds the defendant was mentally ill at the time of the offense, it shall
56 return the general verdict of "guilty of a lesser offense and mentally ill at the time of the offense."

57 (d) If the jury finds the defendant guilty of the charged offense or a lesser included offense
58 and does not find that the defendant was mentally ill at the time of the offense, the jury shall return

59 a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did
60 not find the defendant mentally ill at the time of the offense.

61 (e) The special verdict shall be returned by the jury at the same time as the general verdict,
62 to indicate the basis for its general verdict.

63 (3) In determining whether a defendant should be found guilty and mentally ill at the time
64 of the offense, the jury shall be instructed that the standard of proof applicable to a finding of
65 mental illness is by a preponderance of the evidence. The jury shall also be instructed that the
66 standard of preponderance of the evidence does not apply to the elements establishing a defendant's
67 guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be
68 proven beyond a reasonable doubt.

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

70 **77-16a-103. Plea of guilty and mentally ill.**

71 (1) Upon a plea of guilty and mentally ill at the time of the offense being tendered by a
72 defendant to any charge, the court shall hold a hearing within a reasonable time to determine
73 whether the defendant is currently mentally ill.

74 (2) The court may order the department to examine the defendant, and may receive the
75 testimony of any public or private expert witness offered by the defendant or the prosecutor. The
76 defendant may be placed in the Utah State Hospital for that examination only upon approval by
77 the executive director.

78 (3) (a) A defendant who tenders a plea of guilty and mentally ill at the time of the offense
79 shall be examined first by the trial judge, in compliance with the standards for taking pleas of
80 guilty. The defendant shall be advised that a plea of guilty and mentally ill at the time of the
81 offense is a plea of guilty and not a contingent plea.

82 (b) If the defendant is later found not to be currently mentally ill, that plea remains a valid
83 plea of guilty and mentally ill at the time of the offense, and the defendant shall be sentenced as
84 any other offender.

85 (4) If the court concludes that the defendant is currently mentally ill his plea shall be
86 accepted and he shall be sentenced in accordance with Section 77-16a-104.

87 (5) (a) When the offense is a state offense, expenses of examination, observation, and
88 treatment for the defendant shall be paid by the department.

89 (b) Travel expenses shall be paid by the county where prosecution is commenced.

90 (c) Expenses of examination for defendants charged with violation of a municipal or
91 county ordinance shall be paid by the municipality or county that commenced the prosecution.

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

93 **77-16a-201. Probation.**

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

100 (b) The court may not place ~~a mentally ill~~ an offender who has been convicted of ~~[a~~
101 ~~capital felony on probation]~~ the felony offenses listed in Section 76-3-406 on probation, regardless
102 of whether he is or has been mentally ill.

103 (2) The period of probation for a felony offense committed by a person who has been
104 found guilty and mentally ill at the time of the offense may be for no less than five years~~[, or until~~
105 ~~the expiration of the defendant's sentence, whichever occurs first]~~. Probation for those offenders
106 may not be subsequently reduced by the sentencing court without consideration of an updated
107 report on the mental health status of the defendant.

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

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

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

116 (4) Failure to continue treatment or any other condition of probation, except by agreement
117 with the entity providing treatment and the sentencing court, is a basis for initiating probation
118 violation hearings.

119 (5) The court may not release a mentally ill offender into the community, as a part of
120 probation, if it finds by clear and convincing evidence that he:

121 (a) poses an immediate physical danger to himself or others, including jeopardizing his
122 own or others' safety, health, or welfare if released into the community; or

123 (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and
124 shelter, if released into the community.

125 (6) A mentally ill offender who is not eligible for release into the community under the
126 provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental
127 health facility.

128 Section 5. **Repealer.**

129 This act repeals:

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

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

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

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

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

Legislative Review Note
as of 11-15-01 1:27 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.