

1                                   **SENTENCING IN CAPITAL CASES**

2   **AMENDMENTS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: David L. Gladwell**

6   **This act modifies the Criminal Code by providing that persons found by the court to be**  
7   **mentally retarded are not subject to the death penalty. This act defines mental**  
8   **retardation as applicable to death penalty cases. This act specifies procedures for the**  
9   **examination of defendants alleging mental retardation and procedures for the judicial**  
10 **hearing to determine mental retardation. This act is in response to the recent U.S.**  
11 **Supreme Court case Atkins v. Virginia which prohibits execution of the mentally**  
12 **retarded. This act also provides that defendants with specified subaverage functioning**  
13 **are not subject to the death penalty if the defendant's confession is not substantially**  
14 **corroborated. This act has an immediate effective date.**

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

16 AMENDS:

17           **62A-1-108.5**, as enacted by Chapter 166, Laws of Utah 1991

18           **76-2-305**, as last amended by Chapter 2, Laws of Utah 1999

19           **76-3-207**, as last amended by Chapters 24 and 26, Laws of Utah 2002

20           **77-18a-1**, as last amended by Chapter 364, Laws of Utah 1997

21 ENACTS:

22           **77-15a-101**, Utah Code Annotated 1953

23           **77-15a-102**, Utah Code Annotated 1953

24           **77-15a-103**, Utah Code Annotated 1953

25           **77-15a-104**, Utah Code Annotated 1953

26           **77-15a-105**, Utah Code Annotated 1953

27           **77-15a-106**, Utah Code Annotated 1953



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

29 Section 1. Section **62A-1-108.5** is amended to read:

30 **62A-1-108.5. Mental illness and mental retardation examinations --**

31 **Responsibilities of the department.**

32 (1) In accomplishing its duties to conduct mental illness and mental retardation  
33 examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed  
34 as outlined in this section and within appropriations authorized by the Legislature. The  
35 executive director may delegate his responsibilities under this section to one or more divisions  
36 within the department.

37 (2) When the department is ordered by the court to conduct a mental illness or mental  
38 retardation examination, the executive director shall:

39 (a) direct that the examination be performed at the Utah State Hospital; or

40 (b) designate at least one examiner, selected under Subsection (3), to examine the  
41 defendant in his current custody or status.

42 (3) The department shall establish criteria, in consultation with the Commission on  
43 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct  
44 mental illness and mental retardation examinations under Subsection (2)(b). In making this  
45 selection, the department shall follow the provisions of Title 63, Chapter 56, Utah Procurement  
46 Code.

47 (4) Nothing in this section prohibits the executive director, at the request of defense  
48 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of  
49 Criminal Procedure, and for good cause shown, from proposing a person who has not been  
50 previously selected under Subsection (3) to contract with the department to conduct the  
51 examination. In selecting that person, the criteria of the department established under  
52 Subsection (3) and the provisions of Title 63, Chapter 56, Utah Procurement Code, shall be  
53 met.

54 Section 2. Section **76-2-305** is amended to read:

55 **76-2-305. Mental illness -- Use as a defense -- Influence of alcohol or other**  
56 **substance voluntarily consumed -- Definition.**

57 (1) (a) It is a defense to a prosecution under any statute or ordinance that the defendant,  
58 as a result of mental illness, lacked the mental state required as an element of the offense

59 charged.

60 (b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the  
61 penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation  
62 reducing the level of a criminal homicide or attempted criminal homicide offense under  
63 Section 76-5-205.5.

64 (2) The defense defined in this section includes the defenses known as "insanity" and  
65 "diminished mental capacity."

66 (3) A person who asserts a defense of insanity or diminished mental capacity, and who  
67 is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled  
68 substances, or volatile substances at the time of the alleged offense is not excused from  
69 criminal responsibility on the basis of mental illness if the alcohol or substance caused,  
70 triggered, or substantially contributed to the mental illness.

71 (4) (a) "Mental illness" means a mental disease or defect that substantially impairs a  
72 person's mental, emotional, or behavioral functioning. A mental defect may be a congenital  
73 condition, the result of injury, or a residual effect of a physical or mental disease and includes,  
74 but is not limited to, mental retardation.

75 (b) "Mental illness" does not mean [~~:(i) a personality or character disorder; or (ii)~~] an  
76 abnormality manifested primarily by repeated criminal conduct.

77 (5) "Mental retardation" means a significant subaverage general intellectual  
78 functioning, existing concurrently with deficits in adaptive behavior, and manifested [~~during~~  
79 ~~the developmental period as defined by the current Diagnostic and Statistical Manual of the~~  
80 ~~American Psychiatric Association]~~ prior to age 22.

81 Section 3. Section **76-3-207** is amended to read:

82 **76-3-207. Capital felony -- Sentencing proceeding.**

83 (1) (a) When a defendant has pled guilty to or been found guilty of a capital felony,  
84 there shall be further proceedings before the court or jury on the issue of sentence.

85 (b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall  
86 be conducted before a jury or, upon request of the defendant and with the approval of the court  
87 and the consent of the prosecution, by the court which accepted the plea.

88 (c) (i) When a defendant has been found guilty of a capital felony, the proceedings  
89 shall be conducted before the court or jury which found the defendant guilty, provided the

90 defendant may waive hearing before the jury with the approval of the court and the consent of  
91 the prosecution, in which event the hearing shall be before the court.

92 (ii) If~~[, however,]~~ circumstances make it impossible or impractical to reconvene the  
93 same jury for the sentencing proceedings, the court may dismiss that jury and convene a new  
94 jury for the proceedings.

95 (d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand  
96 from an appellate court, the sentencing authority shall be determined as provided in Subsection  
97 (6).

98 (2) (a) In capital sentencing proceedings, evidence may be presented on:

99 (i) the nature and circumstances of the crime;

100 (ii) the defendant's character, background, history, and mental and physical condition;

101 (iii) the victim and the impact of the crime on the victim's family and community

102 without comparison to other persons or victims; and

103 (iv) any other facts in aggravation or mitigation of the penalty that the court considers  
104 relevant to the sentence.

105 (b) Any evidence the court considers to have probative force may be received  
106 regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and  
107 the defendant shall be permitted to present argument for or against the sentence of death.

108 (3) Aggravating circumstances include those outlined in Section 76-5-202.

109 (4) Mitigating circumstances include:

110 (a) the defendant has no significant history of prior criminal activity;

111 (b) the homicide was committed while the defendant was under the influence of mental  
112 or emotional disturbance;

113 (c) the defendant acted under duress or under the domination of another person;

114 (d) ~~[(+)]~~ at the time of the homicide, the capacity of the defendant to appreciate the  
115 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired  
116 as a result of a mental ~~[illness or mental retardation]~~ condition, intoxication, or influence of  
117 drugs~~[, and]~~, except that "mental condition" under this Subsection (4)(d) does not mean an  
118 abnormality manifested primarily by repeated criminal conduct;

119 ~~[(ii) as used in Subsection (4)(d)(i):]~~

120 ~~[(A) "mental illness" has the same definition as in Section 76-2-305; and]~~

121           ~~[(B) "mental retardation" means a significant subaverage general intellectual~~  
122 ~~functioning, existing concurrently with deficits in adaptive behavior;]~~

123           (e) the youth of the defendant at the time of the crime;

124           (f) the defendant was an accomplice in the homicide committed by another person and  
125 the defendant's participation was relatively minor; and

126           (g) any other fact in mitigation of the penalty.

127           (5) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except  
128 as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it  
129 shall be instructed as to the punishment to be imposed upon a unanimous decision for death  
130 and that the penalty of either an indeterminate prison term of not less than 20 years and which  
131 may be for life or life in prison without parole, shall be imposed if a unanimous decision for  
132 death is not found.

133           (b) The death penalty shall only be imposed if, after considering the totality of the  
134 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that  
135 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable  
136 doubt, that the imposition of the death penalty is justified and appropriate in the circumstances.  
137 If the jury reports unanimous agreement to impose the sentence of death, the court shall  
138 discharge the jury and shall impose the sentence of death.

139           (c) If the jury is unable to reach a unanimous decision imposing the sentence of death  
140 or the state is not seeking the death penalty, the jury shall then determine whether the penalty  
141 of life in prison without parole shall be imposed, except as provided in Subsection  
142 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury  
143 determines that the sentence of life in prison without parole is appropriate. If the jury reports  
144 agreement by ten jurors or more to impose the sentence of life in prison without parole, the  
145 court shall discharge the jury and shall impose the sentence of life in prison without parole. If  
146 ten jurors or more do not agree upon a sentence of life in prison without parole, the court shall  
147 discharge the jury and impose an indeterminate prison term of not less than 20 years and which  
148 may be for life.

149           (d) If the defendant waives hearing before the jury as to sentencing, with the approval  
150 of the court and the consent of the prosecution, the court shall determine the appropriate  
151 penalty according to the standards of Subsections (5)(b) and (c).

152 (e) If the defendant is sentenced to more than one term of life in prison with or without  
153 the possibility of parole, or in addition to a sentence of life in prison with or without the  
154 possibility of parole the defendant is sentenced for other offenses which result in terms of  
155 imprisonment, the judge shall determine whether the terms of imprisonment shall be imposed  
156 as concurrent or consecutive sentences in accordance with Section 76-3-401.

157 (6) Upon any appeal by the defendant where the sentence is of death, the appellate  
158 court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence  
159 of death and remand the case to the trial court for new sentencing proceedings to the extent  
160 necessary to correct the error or errors. An error in the sentencing proceedings may not result in  
161 the reversal of the conviction of a capital felony. In cases of remand for new sentencing  
162 proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted  
163 in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings,  
164 and if the sentencing proceeding was before a:

165 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the  
166 defendant waives the hearing before the jury with the approval of the court and the consent of  
167 the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or  
168 (c), as applicable;

169 (b) judge, the original trial judge shall conduct the new sentencing proceeding; or

170 (c) judge, and the original trial judge is unable or unavailable to conduct a new  
171 sentencing proceeding, then another judge shall be designated to conduct the new sentencing  
172 proceeding, and the new proceeding will be before a jury unless the defendant waives the  
173 hearing before the jury with the approval of the court and the consent of the prosecution.

174 (7) In the event the death penalty is held to be unconstitutional by the Utah Supreme  
175 Court or the United States Supreme Court, the court having jurisdiction over a person  
176 previously sentenced to death for a capital felony shall cause the person to be brought before  
177 the court, and the court shall sentence the person to:

178 (a) an indeterminate prison term of not less than 20 years and which may be for life, if  
179 the death penalty is held unconstitutional prior to April 27, 1992; or

180 (b) life in prison without parole if the death penalty is held unconstitutional on or after  
181 April 27, 1992, and any person who is thereafter convicted of a capital felony shall be  
182 sentenced to an indeterminate prison term of not less than 20 years and which may be for life or

183 life in prison without parole.

184 (8) If the appellate court's final decision regarding any appeal of a sentence of death  
185 precludes the imposition of the death penalty due to mental retardation or subaverage general  
186 intellectual functioning under Section 77-15a-101, the court having jurisdiction over a  
187 defendant previously sentenced to death for a capital felony shall cause the defendant to be  
188 brought before the court, and the court shall sentence the defendant to life in prison without  
189 parole.

190 Section 4. Section **77-15a-101** is enacted to read:

191 **CHAPTER 15a. EXEMPTIONS FROM DEATH PENALTY IN CAPITAL CASES**

192 **77-15a-101. Mentally retarded defendant not subject to death penalty --**

193 **Defendant with subaverage functioning not subject to death penalty if confession not**  
194 **corroborated.**

195 (1) A defendant who is found by the court to be mentally retarded as defined in Section  
196 77-15a-102 is not subject to the death penalty.

197 (2) A defendant who does not meet the definition of mental retardation under Section  
198 77-15a-102 is not subject to the death penalty if:

199 (a) the defendant has significantly subaverage general intellectual functioning that  
200 exists concurrently with significant deficiencies in adaptive functioning;

201 (b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and

202 (c) the state intends to introduce into evidence a confession by the defendant which is  
203 not supported by substantial evidence independent of the confession.

204 Section 5. Section **77-15a-102** is enacted to read:

205 **77-15a-102. "Mentally retarded" defined.**

206 As used in this chapter, a defendant is "mentally retarded" if:

207 (1) the defendant has significant subaverage general intellectual functioning that results  
208 in and exists concurrently with significant deficiencies in adaptive functioning that exist  
209 primarily in the areas of reasoning or impulse control, or in both of these areas; and

210 (2) the subaverage general intellectual functioning and the significant deficiencies in  
211 adaptive functioning under Subsection (1) are both manifested prior to age 22.

212 Section 6. Section **77-15a-103** is enacted to read:

213 **77-15a-103. Court may raise issue of mental retardation at any time.**

214 The court in which a capital charge is pending may raise the issue of the defendant's  
215 mental retardation at any time. If raised by the court, counsel for each party shall be allowed to  
216 address the issue of mental retardation.

217 Section 7. Section **77-15a-104** is enacted to read:

218 **77-15a-104. Hearing -- Stay of proceeding -- Examinations of defendant -- Scope**  
219 **of examination -- Report -- Procedures.**

220 (1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies  
221 for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the defendant  
222 shall file and serve the prosecuting attorney with written notice of his intention as soon as  
223 practicable, but not fewer than 60 days before trial.

224 (b) If the defendant wishes to claim the exemption provided in Subsection  
225 77-15a-101(2), the defendant shall file and serve the prosecuting attorney with written notice of  
226 his intention as soon as practicable, but not fewer than 60 days before trial.

227 (2) When notice is given under Subsection (1), the court raises the issue, or a motion is  
228 filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the  
229 issue.

230 (3) (a) The court shall order the Department of Human Services to appoint at least two  
231 mental health experts to examine the defendant and report to the court. The experts:

232 (i) may not be involved in the current treatment of the defendant; and

233 (ii) shall have expertise in mental retardation assessment.

234 (b) Upon appointment of the experts, the defendant or other party as directed by the  
235 court shall provide information and materials to the examiners relevant to a determination of  
236 the defendant's mental retardation, including copies of the charging document, arrest or  
237 incident reports pertaining to the charged offense, known criminal history information, and  
238 known prior mental health evaluations and treatments.

239 (c) The court may make the necessary orders to provide the information listed in  
240 Subsection (3)(b) to the examiners.

241 (d) The court may provide in its order appointing the examiners that custodians of  
242 mental health records pertaining to the defendant shall provide those records to the examiners  
243 without the need for consent of the defendant or further order of the court.

244 (e) Prior to examining the defendant, examiners shall specifically advise the defendant



245 of the limits of confidentiality as provided under Section 77-15a-106.

246 (4) During any examinations under Subsection (3), unless the court directs otherwise,  
247 the defendant shall be retained in the same custody or status he was in at the time the  
248 examination was ordered.

249 (5) The experts shall in the conduct of their examinations and in their reports to the  
250 court consider and address:

251 (a) whether the defendant is mentally retarded as defined in Section 77-15a-102;

252 (b) the degree of any mental retardation the expert finds to exist;

253 (c) whether the defendant has the mental deficiencies specified in Subsection  
254 77-15a-101(2); and

255 (d) the degree of any mental deficiencies the expert finds to exist.

256 (6) (a) The experts examining the defendant shall provide written reports to the court,  
257 the prosecution, and the defense within 60 days of the receipt of the court's order, unless the  
258 expert submits to the court a written request for additional time in accordance with Subsection  
259 (6)(c).

260 (b) The reports shall provide to the court and to prosecution and defense counsel the  
261 examiners' written opinions concerning the mental retardation of the defendant.

262 (c) If an examiner requests of the court additional time, the examiner shall provide the  
263 report to the court and counsel within 90 days from the receipt of the court's order unless, for  
264 good cause shown, the court authorizes an additional period of time to complete the  
265 examination and provide the report.

266 (7) Any written report submitted by an expert shall:

267 (a) identify the specific matters referred for evaluation;

268 (b) describe the procedures, techniques, and tests used in the examination and the  
269 purpose or purposes for each;

270 (c) state the expert's clinical observations, findings, and opinions; and

271 (d) identify the sources of information used by the expert and present the basis for the  
272 expert's clinical findings and opinions.

273 (8) Within 30 days after receipt of the report from the Department of Human Services,  
274 but not later than five days before hearing, or at any other time the court directs, the  
275 prosecuting attorney shall file and serve upon the defendant a notice of witnesses the

276 prosecuting attorney proposes to call in rebuttal.

277 (9) (a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party  
278 from producing any other testimony as to the mental condition of the defendant.

279 (b) Expert witnesses who are not appointed by the court are not entitled to  
280 compensation under Subsection (10).

281 (10) (a) Expenses of examinations of the defendant ordered by the court under this  
282 section shall be paid by the Department of Human Services.

283 (b) Travel expenses associated with any court-ordered examination that are incurred by  
284 the defendant shall be charged by the Department of Human Services to the county where  
285 prosecution is commenced.

286 (11) (a) When the report is received, the court shall set a date for a hearing to  
287 determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and  
288 the judge shall make the determination within a reasonable time prior to jury selection.

289 (b) Prosecution and defense counsel may subpoena to testify at the hearing any person  
290 or organization appointed by the Department of Human Services to conduct the examination  
291 and any independent examiner.

292 (c) The court may call any examiner to testify at the hearing who is not called by the  
293 parties. If the court calls an examiner, counsel for the parties may cross-examine that  
294 examiner.

295 (12) (a) A defendant is presumed to be not mentally retarded unless the court, by a  
296 preponderance of the evidence, finds the defendant to be mentally retarded. The burden of  
297 proof is upon the proponent of mental retardation at the hearing.

298 (b) A finding of mental retardation does not operate as an adjudication of mental  
299 retardation for any purpose other than exempting the person from a sentence of death in the  
300 case before the court.

301 (13) (a) The defendant is presumed not to possess the mental deficiencies listed in  
302 Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the  
303 defendant has significant subaverage general intellectual functioning that exists concurrently  
304 with significant deficiencies in adaptive functioning and that this functioning was manifested  
305 prior to age 22. The burden of proof is upon the proponent of that proposition.

306 (b) If the court finds by a preponderance of the evidence that the defendant has

307 significant subaverage general intellectual functioning that exists concurrently with significant  
308 deficiencies in adaptive functioning and that this functioning was manifested prior to age 22,  
309 then the burden is upon the state to establish that any confession by the defendant which the  
310 state intends to introduce into evidence is supported by substantial evidence independent of the  
311 confession.

312 (14) (a) If the court finds the defendant mentally retarded, it shall issue an order:

313 (i) containing findings of fact and conclusions of law, and addressing each of the  
314 factors in Subsections (5)(a) and (b); and

315 (ii) stating that the death penalty is not a sentencing option in the case before the court.

316 (b) If the court finds by a preponderance of the evidence that the state fails to establish  
317 that any confession is supported by substantial evidence independent of the confession, the  
318 state may proceed with its case and:

319 (i) introduce the confession into evidence, and the death penalty will not be a  
320 sentencing option in the case; or

321 (ii) not introduce into evidence any confession or the fruits of a confession that the  
322 court has found is not supported by substantial evidence independent of the confession, and the  
323 death penalty will be a sentencing option in the case.

324 (c) (i) A finding by the court regarding whether the defendant qualifies for an  
325 exemption under Section 77-15a-101 is a final determination of that issue for purposes of this  
326 chapter.

327 (ii) The following questions may not be submitted to the jury by instruction, special  
328 verdict, argument, or other means:

329 (A) whether the defendant is mentally retarded for purposes of this chapter; and

330 (B) whether the defendant possesses the mental deficiencies specified in Subsection  
331 77-15a-101(2).

332 (iii) This chapter does not prevent the defendant from submitting evidence of  
333 retardation or other mental deficiency to establish a mental condition as a mitigating  
334 circumstance under Section 76-3-207.

335 (15) A ruling by the court that the defendant is exempt from the death penalty may be  
336 appealed by the state pursuant to Subsection 77-18a-1(2)(h).

337 (16) Failure to comply with this section does not result in the dismissal of criminal

338 charges.

339 Section 8. Section **77-15a-105** is enacted to read:

340 **77-15a-105. Defendant's wilful failure to cooperate -- Expert testimony regarding**  
341 **retardation is barred.**

342 (1) If the defendant files notice, raises the issue, or intends to present evidence or make  
343 an argument that the defendant is exempt from the death penalty under this chapter, the  
344 defendant shall make himself available and fully cooperate in any examination by mental  
345 health experts appointed by the Department of Human Services and any other independent  
346 examiners for the defense or the prosecution.

347 (2) If the defendant wilfully fails to make himself available and fully cooperate in the  
348 examination, and that failure is established to the satisfaction of the court, the defendant is  
349 barred from presenting expert testimony relating to any exemption from the death penalty  
350 under this chapter.

351 Section 9. Section **77-15a-106** is enacted to read:

352 **77-15a-106. Limitations on admitting mental retardation examination evidence.**

353 (1) The following may not be admitted into evidence against the defendant in any  
354 criminal proceeding, except as provided in Subsection (2):

355 (a) any statement made by the defendant in the course of any mental examination  
356 conducted under this chapter, whether the examination is with or without the consent of the  
357 defendant, and any testimony by the expert based upon the defendant's statement; and

358 (b) any other fruits of the defendant's statement under Subsection (1)(a).

359 (2) Evidence under Subsection (1) may be admitted on an issue regarding a mental  
360 condition on which the defendant has introduced evidence.

361 Section 10. Section **77-18a-1** is amended to read:

362 **77-18a-1. Appeals -- When proper.**

363 (1) An appeal may be taken by the defendant from:

364 (a) the final judgment of conviction, whether by verdict or plea;

365 (b) an order made after judgment that affects the substantial rights of the defendant;

366 (c) an interlocutory order when upon petition for review the appellate court decides the  
367 appeal would be in the interest of justice; or

368 (d) any order of the court judging the defendant by reason of a mental disease or defect

369 incompetent to proceed further in a pending prosecution.

370 (2) An appeal may be taken by the prosecution from:

371 (a) a final judgment of dismissal, including a dismissal of a felony information

372 following a refusal to bind the defendant over for trial;

373 (b) an order arresting judgment;

374 (c) an order terminating the prosecution because of a finding of double jeopardy or  
375 denial of a speedy trial;

376 (d) a judgment of the court holding a statute or any part of it invalid;

377 (e) an order of the court granting a pretrial motion to suppress evidence when upon a  
378 petition for review the appellate court decides that the appeal would be in the interest of justice;

379 (f) under circumstances not amounting to a final order under Subsection (2)(a), a  
380 refusal to bind the defendant over for trial on a felony as charged or a pretrial order dismissing  
381 or quashing in part a felony information, when upon a petition for review the appellate court  
382 decides that the appeal would be in the interest of justice; [or]

383 (g) an order of the court granting a motion to withdraw a plea of guilty or no contest[-];  
384 or

385 (h) a finding pursuant to Title 77, Chapter 15a, Exemptions from Death Penalty in  
386 Capital Cases, that a capital defendant is exempt from a sentence of death, when upon a  
387 petition for review the appellate court decides that the appeal would be in the interest of justice.

388 Section 11. **Effective date.**

389 If approved by two-thirds of all the members elected to each house, this act takes effect  
390 upon approval by the governor, or the day following the constitutional time limit of Utah  
391 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
392 the date of veto override.

### Legislative Review Note

as of 9-30-02 10:44 AM

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

Office of Legislative Research and General Counsel

### Interim Committee Note

**S.B. 8**

**12-12-02 1:37 PM**

**as of 12-12-02 1:37 PM**

The Judiciary Interim Committee recommended this bill.

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**Fiscal Note**

Sentencing in Capital Cases Amendments

23-Jan-03

**Bill Number: SB0008**10:55 AM

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This bill requires an ongoing appropriation of \$3,900 General Fund to the Department of Human Services for expenses, including evaluations and court time costs. This funding will start as a supplemental appropriation in FY 2003. Other costs can be absorbed within existing budgets. Estimated costs are based on one potential case per year.

	<u>FY 03 Approp.</u>	<u>FY 03 Revenue</u>	<u>FY 04 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Approp.</u>	<u>FY 05 Revenue</u>
General Fund	\$3,900	\$0	\$3,900	\$0	\$3,900	\$0
<b>TOTAL</b>	<b>\$3,900</b>	<b>\$0</b>	<b>\$3,900</b>	<b>\$0</b>	<b>\$3,900</b>	<b>\$0</b>

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**