

1 **GUILTY AND MENTALLY ILL SENTENCING**
2 **AMENDMENTS**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: David L. Gladwell**

6 **This act modifies the Code of Criminal Procedure by providing that in specified**
7 **circumstances a defendant found to be guilty and mentally ill may be sentenced to a**
8 **county jail. This act also clarifies existing language regarding procedure.**

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

10 AMENDS:

11 **77-16a-104**, as last amended by Chapter 254, Laws of Utah 1995

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

13 Section 1. Section **77-16a-104** is amended to read:

14 **77-16a-104. Verdict of guilty and mentally ill -- Hearing to determine present**
15 **mental state.**

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

18 (2) The court may order the department to examine the defendant to determine his
19 mental condition, and may receive the evidence of any public or private expert witness offered
20 by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for
21 that examination only upon approval of the executive director.

22 (3) If the court finds by clear and convincing evidence that the defendant is currently
23 mentally ill, it shall impose any sentence that could be imposed under law upon a defendant
24 who is not mentally ill and who is convicted of the same offense, and:

25 (a) commit him to the department, in accordance with the provisions of Section
26 77-16a-202, if [it]:

27 (i) the court gives the department the opportunity to provide an evaluation and



28 recommendation under Subsection (4); and

29 (ii) the court finds by clear and convincing evidence that:

30 [(†)] (A) because of his mental illness the defendant poses an immediate physical
31 danger to self or others, including jeopardizing his own or others' safety, health, or welfare if
32 placed in a correctional or probation setting, or lacks the ability to provide the basic necessities
33 of life, such as food, clothing, and shelter, if placed on probation; and

34 [(†)] (B) the department is able to provide the defendant with treatment, care, custody,
35 and security that is adequate and appropriate to the defendant's conditions and needs[. In order
36 to insure that the requirements of this subsection are met, the court shall notify the executive
37 director of the proposed placement and provide the department with an opportunity to evaluate
38 the defendant and make a recommendation to the court regarding placement prior to
39 commitment];

40 (b) order probation in accordance with Section 77-16a-201; or

41 (c) if the ~~[requirements of Subsections (a) and (b) are not met,]~~ court determines that
42 commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is
43 not appropriate, the court shall place the defendant in the custody of UDC or a county jail as
44 allowed by law.

45 (4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall,
46 prior to making a determination, notify the executive director of the proposed placement and
47 provide the department with an opportunity to evaluate the defendant and make a
48 recommendation to the court regarding placement prior to commitment.

49 ~~[(4)]~~ (5) If the court finds that the defendant is not currently mentally ill, it shall
50 sentence the defendant as it would any other defendant.

51 ~~[(5)]~~ (6) Expenses for examinations ordered under this section shall be paid in
52 accordance with Subsection 77-16a-103(5).

Legislative Review Note
as of 1-24-03 4:05 PM

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

Office of Legislative Research and General Counsel

State Impact

The provisions of this bill could shift a portion of the cost of incarceration from the State to the Counties. The Department of Corrections could save approximately \$25,000 for each inmate sentenced to the county jail instead of a State facility. The State would still be required to pay jail reimbursement of \$16,200. This is 70 percent of the actual annual jail reimbursement cost, therefore leaving the county with a \$6,900 unreimbursed amount. The total amount will depend on the number of inmates that would be sentenced to county facilities instead of State facilities. The total number of individuals that will be affected is not known. The net costs listed below are for one inmate.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	(\$8,800)	(\$17,600)	\$0	\$0
TOTAL	(\$8,800)	(\$17,600)	\$0	\$0

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst