

1 **INTELLECTUAL DISABILITY TERMINOLOGY**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Paul Ray**

6 Senate Sponsor: Lyle W. Hillyard

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Criminal Code and the Utah Code of Criminal Procedure
11 regarding terms relating to mental retardation.

12 **Highlighted Provisions:**

13 This bill replaces the term "mental retardation" and its variations with "intellectual
14 disability."

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **76-2-305**, as last amended by Laws of Utah 2003, Chapter 11

22 **77-15-5**, as last amended by Laws of Utah 2012, Chapters 109 and 311

23 **77-15a-101**, as enacted by Laws of Utah 2003, Chapter 11

24 **77-15a-102**, as enacted by Laws of Utah 2003, Chapter 11

25 **77-15a-103**, as enacted by Laws of Utah 2003, Chapter 11

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

28 Section 1. Section **76-2-305** is amended to read:

29 **76-2-305. Mental illness -- Use as a defense -- Influence of alcohol or other**

30 **substance voluntarily consumed -- Definition.**

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

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

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

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

45 (4) As used in this section:

46 (a) "Intellectual disability" means a significant subaverage general intellectual
47 functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to
48 age 22.

49 [(4)(a)] (b) (i) "Mental illness" means a mental disease or defect that substantially
50 impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a
51 congenital condition, the result of injury, or a residual effect of a physical or mental disease and
52 includes, but is not limited to, [~~mental retardation~~] intellectual disability.

53 [(b)] (ii) "Mental illness" does not mean an abnormality manifested primarily by
54 repeated criminal conduct.

55 [(5) "~~Mental retardation~~" means a significant subaverage general intellectual
56 functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to
57 age 22.]

58 Section 2. Section 77-15-5 is amended to read:

59 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
60 **defendant -- Scope of examination and report.**

61 (1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the
62 defendant's competency to stand trial or when the court raises the issue of the defendant's
63 competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay
64 all proceedings. If the proceedings are in a court other than the district court in which the
65 petition is filed, the district court shall notify that court of the filing of the petition.

66 (b) The district court in which the petition is filed:

67 (i) shall review the allegations of incompetency;

68 (ii) may hold a limited hearing solely for the purpose of determining the sufficiency of
69 the petition if the court finds the petition is not clearly sufficient on its face;

70 (iii) shall hold a hearing if the petition is opposed by either party;

71 (iv) may not order an examination of the defendant or order a hearing on the mental
72 condition of the defendant unless the court finds that the allegations in the petition raise a bona
73 fide doubt as to the defendant's competency to stand trial; and

74 (v) shall order an examination of the defendant and a hearing on the defendant's mental
75 condition if the court finds that the allegations raise a bona fide doubt as to the defendant's
76 competency to stand trial.

77 (2) (a) After the granting of a petition and prior to a full competency hearing, the court
78 may order the Department of Human Services to examine the person and to report to the court
79 concerning the defendant's mental condition.

80 (b) The defendant shall be examined by at least two mental health experts not involved
81 in the current treatment of the defendant.

82 (c) If the issue is sufficiently raised in the petition or if it becomes apparent that the
83 defendant may be incompetent due to ~~[mental retardation]~~ intellectual disability, at least one
84 expert experienced in ~~[mental retardation]~~ intellectual disability assessment shall evaluate the
85 defendant. Upon appointment of the experts, the petitioner or other party as directed by the

86 court shall provide information and materials to the examiners relevant to a determination of
87 the defendant's competency and shall provide copies of the charging document, arrest or
88 incident reports pertaining to the charged offense, known criminal history information, and
89 known prior mental health evaluations and treatments.

90 (d) The prosecuting and defense attorneys shall cooperate in providing the relevant
91 information and materials to the examiners, and the court may make the necessary orders to
92 provide the information listed in Subsection (2)(c) to the examiners. The court may provide in
93 its order for a competency examination of a defendant that custodians of mental health records
94 pertaining to the defendant shall provide those records to the examiners without the need for
95 consent of the defendant or further order of the court.

96 (3) During the examination under Subsection (2), unless the court or the executive
97 director of the department directs otherwise, the defendant shall be retained in the same
98 custody or status he was in at the time the examination was ordered.

99 (4) The experts shall in the conduct of their examination and in their report to the court
100 consider and address, in addition to any other factors determined to be relevant by the experts:

101 (a) the defendant's present capacity to:

102 (i) comprehend and appreciate the charges or allegations against the defendant;

103 (ii) disclose to counsel pertinent facts, events, and states of mind;

104 (iii) comprehend and appreciate the range and nature of possible penalties, if
105 applicable, that may be imposed in the proceedings against the defendant;

106 (iv) engage in reasoned choice of legal strategies and options;

107 (v) understand the adversary nature of the proceedings against the defendant;

108 (vi) manifest appropriate courtroom behavior; and

109 (vii) testify relevantly, if applicable;

110 (b) the impact of the mental disorder[;] or [~~mental retardation~~] intellectual disability, if
111 any, on the nature and quality of the defendant's relationship with counsel;

112 (c) if psychoactive medication is currently being administered:

113 (i) whether the medication is necessary to maintain the defendant's competency; and

114 (ii) the effect of the medication, if any, on the defendant's demeanor and affect and
115 ability to participate in the proceedings; and

116 (d) whether the defendant is exhibiting false or exaggerated physical or psychological
117 symptoms relevant to the defendant's capacity to stand trial.

118 (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert
119 shall indicate in the report:

120 (a) which of the above factors contributes to the defendant's incompetency;

121 (b) the nature of the defendant's mental disorder or [~~mental retardation~~] intellectual
122 disability and its relationship to the factors contributing to the defendant's incompetency;

123 (c) the treatment or treatments appropriate and available;

124 (d) the defendant's capacity to give informed consent to treatment to restore
125 competency; and

126 (e) any diagnostic instruments, methods, and observations used by the expert to
127 determine whether or not the defendant is exhibiting false or exaggerated physical or
128 psychological symptoms relevant to the defendant's capacity to stand trial and the expert's
129 opinion as to the significance of any false or exaggerated symptoms regarding the defendant's
130 capacity.

131 (6) The experts examining the defendant shall provide an initial report to the court and
132 the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The
133 report shall inform the court of the examiner's opinion concerning the competency of the
134 defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that
135 additional time is needed to complete the report. If the examiner informs the court that
136 additional time is needed, the examiner shall have up to an additional 30 days to provide the
137 report to the court and counsel. The examiner shall provide the report within 60 days from the
138 receipt of the court's order unless, for good cause shown, the court authorizes an additional
139 period of time to complete the examination and provide the report.

140 (7) Any written report submitted by the experts shall:

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

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

144 (c) state the expert's clinical observations, findings, and opinions on each issue referred
145 for examination by the court, and indicate specifically those issues, if any, on which the expert
146 could not give an opinion; and

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

149 (8) (a) Any statement made by the defendant in the course of any competency
150 examination, whether the examination is with or without the consent of the defendant, any
151 testimony by the expert based upon the statement, and any other fruits of the statement may not
152 be admitted in evidence against the defendant in any criminal proceeding except on an issue
153 respecting mental condition on which the defendant has introduced evidence. The evidence
154 may be admitted, however, where relevant to a determination of the defendant's competency.

155 (b) Prior to examining the defendant, examiners should specifically advise the
156 defendant of the limits of confidentiality as provided under Subsection (8)(a).

157 (9) (a) When the report is received the court shall set a date for a mental hearing. The
158 hearing shall be held in not less than five and not more than 15 days, unless the court enlarges
159 the time for good cause.

160 (b) Any person or organization directed by the department to conduct the examination
161 may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency
162 of the defendant, all experts should be called to testify at the hearing if reasonably available. A
163 conflict in the opinions of the experts does not require the appointment of an additional expert
164 unless the court determines the appointment to be necessary.

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

167 (10) (a) A person shall be presumed competent unless the court, by a preponderance of
168 the evidence, finds the person incompetent to proceed. The burden of proof is upon the
169 proponent of incompetency at the hearing.

170 (b) An adjudication of incompetency to proceed does not operate as an adjudication of
171 incompetency to give informed consent for medical treatment or for any other purpose, unless
172 specifically set forth in the court order.

173 (11) In determining the defendant's competency to stand trial, the court shall consider
174 the totality of the circumstances, which may include the testimony of lay witnesses, in addition
175 to the expert testimony, studies, and reports provided under this section.

176 (12) (a) If the court finds the defendant incompetent to stand trial, its order shall
177 contain findings addressing each of the factors in Subsections (4)(a) and (b). The order issued
178 pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is
179 committed or to the person who is responsible for assessing the defendant's progress toward
180 competency shall be provided contemporaneously with the transportation and commitment
181 order of the defendant, unless exigent circumstances require earlier commitment in which case
182 the court shall forward the order within five working days of the order of transportation and
183 commitment of the defendant.

184 (b) The order finding the defendant incompetent to stand trial shall be accompanied by:

185 (i) copies of the reports of the experts filed with the court pursuant to the order of
186 examination if not provided previously;

187 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to
188 the court relative to the mental condition of the defendant; and

189 (iii) any other documents made available to the court by either the defense or the
190 prosecution, pertaining to the defendant's current or past mental condition.

191 (13) (a) If the court finds it necessary to order the defendant transported prior to the
192 completion of findings and compilation of documents required under Subsection (12), the
193 transportation and commitment order delivering the defendant to the Utah State Hospital, or
194 other mental health facility as directed by the executive director of the Department of Human
195 Services or a designee, shall indicate that the defendant's commitment is based upon a finding
196 of incompetency, and the mental health facility's copy of the order shall be accompanied by the
197 reports of any experts filed with the court pursuant to the order of examination.

198 (b) The executive director of the Department of Human Services or a designee may
199 refuse to accept a defendant as a patient unless the defendant is accompanied by a
200 transportation and commitment order which is accompanied by the reports.

201 (14) Upon a finding of incompetency to stand trial by the court, the prosecuting and
202 defense attorneys shall provide information and materials relevant to the defendant's
203 competency to the facility where the defendant is committed or to the person responsible for
204 assessing the defendant's progress towards competency. In addition to any other materials, the
205 prosecuting attorney shall provide:

206 (a) copies of the charging document and supporting affidavits or other documents used
207 in the determination of probable cause;

208 (b) arrest or incident reports prepared by a law enforcement agency pertaining to the
209 charged offense; and

210 (c) information concerning the defendant's known criminal history.

211 (15) The court may make any reasonable order to insure compliance with this section.

212 (16) Failure to comply with this section does not result in the dismissal of criminal
213 charges.

214 Section 3. Section **77-15a-101** is amended to read:

215 **77-15a-101. Intellectually disabled defendant not subject to death penalty --**
216 **Defendant with subaverage functioning not subject to death penalty if confession not**
217 **corroborated.**

218 (1) A defendant who is found by the court to be [~~mentally retarded~~] intellectually
219 disabled as defined in Section **77-15a-102** is not subject to the death penalty.

220 (2) A defendant who does not meet the definition of [~~mental retardation~~] intellectually
221 disabled under Section **77-15a-102** is not subject to the death penalty if:

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

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

225 (c) the state intends to introduce into evidence a confession by the defendant which is

226 not supported by substantial evidence independent of the confession.

227 Section 4. Section **77-15a-102** is amended to read:

228 **77-15a-102. "Intellectually disabled" defined.**

229 As used in this chapter, a defendant is "~~mentally retarded~~ intellectually disabled" if:

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

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

235 Section 5. Section **77-15a-103** is amended to read:

236 **77-15a-103. Court may raise issue of intellectual disability at any time.**

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