

INSANITY DEFENSE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the criminal defense of not guilty by reason of insanity.

Highlighted Provisions:

This bill:

- ▶ modifies the circumstances under which a defendant may plead not guilty to a criminal offense by reason of insanity;
- ▶ places the burden of proof on a defendant asserting a defense of not guilty by reason of insanity;
- ▶ modifies provisions relating to supervision, assessment, and release of a defendant committed to the Department of Human Services after being found not guilty of a criminal offense by reason of insanity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-305, as last amended by Laws of Utah 2016, Chapter 115



28 [77-16a-304](#), as last amended by Laws of Utah 2011, Chapter 366

29 [77-16a-305](#), as last amended by Laws of Utah 1993, Chapter 285

30 [77-16a-306](#), as last amended by Laws of Utah 2011, Chapter 366

31

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

33 Section 1. Section [76-2-305](#) is amended to read:

34 **[76-2-305. Mental illness -- Use as a defense -- Burden of proof -- Influence of](#)**
35 **[alcohol or other substance voluntarily consumed -- Definition.](#)**

36 (1) As used in this section:

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

40 (b) (i) "Mental illness" means a mental disease or defect that substantially impairs an
41 individual's mental, emotional, or behavioral functioning, and may include a mental disease or
42 defect caused by a congenital condition, injury, or physical or mental disease.

43 (ii) "Mental illness" includes an intellectual disability.

44 (iii) "Mental illness" does not include an antisocial personality disorder as defined in
45 the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by
46 the American Psychiatric Association.

47 ~~[(1)]~~ (2) (a) It is a defense to a prosecution under any statute or ordinance that the
48 defendant, as a result of mental illness, ~~[lacked the mental state required as an element of the~~
49 ~~offense charged.]~~ was unable to appreciate the nature and quality or the wrongfulness of the
50 defendant's actions.

51 (b) A defendant asserting the defense described in Subsection (2)(a) has the burden of
52 pleading and proving by clear and convincing evidence the facts necessary to entitle the
53 defendant to be found not guilty under this section.

54 ~~[(b)]~~ (3) Mental illness is not otherwise a defense, but may be evidence in mitigation of
55 the penalty in a capital felony under Section [76-3-207](#) and may be evidence of special
56 mitigation reducing the level of a criminal homicide or attempted criminal homicide offense
57 under Section [76-5-205.5](#).

58 ~~[(2)]~~ (4) The defense ~~[defined in this section]~~ described in Subsection (2)(a) includes

59 the defenses known as "insanity" and "diminished mental capacity."

60 ~~[(3) A person]~~ (5) A defendant who asserts a defense of insanity or diminished mental
61 capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol,
62 controlled substances, or volatile substances at the time of the alleged offense is not excused
63 from criminal responsibility on the basis of mental illness if the alcohol or substance caused~~;~~
64 ~~triggered;~~ or substantially contributed to the ~~[mental illness]~~ defendant's inability to appreciate
65 the nature and quality or the wrongfulness of the defendant's actions as described in Subsection
66 (2)(a).

67 ~~[(4) As used in this section:]~~

68 ~~[(a) "Intellectual disability" means a significant subaverage general intellectual~~
69 ~~functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to~~
70 ~~age 22.]~~

71 ~~[(b) (i) "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, intellectual disability.]~~

75 ~~[(ii) "Mental illness" does not mean an abnormality manifested primarily by repeated~~
76 ~~criminal conduct.]~~

77 Section 2. Section **77-16a-304** is amended to read:

78 **77-16a-304. Review after commitment.**

79 (1) (a) The executive director, or the executive director's designee, shall establish a
80 review team of at least three ~~[qualified staff members]~~ licensed mental health professionals to
81 review the defendant's mental condition at least every ~~[six]~~ 12 months.

82 (b) When establishing a review team under this Subsection (1), the executive director
83 shall take into account best practices for assessing the defendant's risk of violence.

84 ~~[(b)]~~ (c) The review team described in ~~[Subsection (1)(a)]~~ this Subsection (1) shall
85 include:

86 (i) at least one forensic psychiatrist; and

87 (ii) if the defendant has an intellectual disability, at least one staff member who is a
88 designated intellectual disability professional.

89 (2) If the review team described in Subsection (1) finds that the defendant has

90 recovered from the defendant's mental illness, or, that the defendant [~~still has a~~] has not
91 recovered from the defendant's mental illness but does not present a substantial danger to self
92 or others, the executive director, or the executive director's designee, shall:

93 (a) notify the court that committed the defendant that the defendant is a candidate for
94 discharge; and

95 (b) provide the court with a report stating the facts that form the basis for the
96 recommendation.

97 (3) (a) The court shall conduct a hearing within [~~10 business~~] 30 days after [~~receipt of~~
98 ~~the executive director's, or the executive director's designee's, notification~~] the day on which
99 the court receives the notification described in Subsection (2).

100 (b) The court clerk shall provide notice of the date and time of the hearing to:

101 (i) the prosecuting attorney;

102 (ii) the defendant's attorney; and

103 (iii) any victim of the crime for which the defendant was found not guilty by reason of
104 insanity.

105 (4) (a) The court shall order that the defendant be discharged from commitment in
106 accordance with Section 77-16a-306 if the court finds that the defendant:

107 (i) [~~no longer has a~~] has recovered from mental illness; or

108 (ii) has [~~a~~] not recovered from mental illness, but is no longer [~~presents~~] a substantial
109 danger to self or others.

110 (b) The court shall order the [~~person~~] defendant conditionally released in accordance
111 with Section 77-16a-305 if the court finds that the defendant:

112 (i) has a mental illness;

113 (ii) is a substantial danger to self or others; and

114 (iii) can be [~~controlled~~] adequately controlled if conditionally released with proper
115 care, medication, supervision, and treatment as a condition of release.

116 (c) The court shall order that the commitment be continued if the court finds that the
117 defendant:

118 (i) has not recovered from the defendant's mental illness;

119 (ii) is a substantial danger to self or others; and

120 (iii) cannot be adequately [~~be~~] controlled if conditionally released [~~on supervision~~]

121 with proper care, medication, supervision, and treatment as a condition of release.

122 (d) (i) [~~Except as provided in Subsection (4)(d)(ii), the~~] The court may not discharge a
123 defendant whose mental illness is in remission as a result of medication or hospitalization if it
124 can be determined within reasonable medical probability that, without continued medication or
125 hospitalization, the defendant's mental illness will reoccur, making the defendant a substantial
126 danger to self or others.

127 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection
128 (4)(d)(i) may be a candidate for conditional release, in accordance with Section [77-16a-305](#).

129 Section 3. Section [77-16a-305](#) is amended to read:

130 **[77-16a-305. Conditional release.](#)**

131 (1) If the review team described in Subsection [77-16a-304\(1\)](#) finds that a defendant is
132 not eligible for discharge[;] in accordance with [~~Section~~] Subsection [77-16a-304\(4\)\(a\)](#), but that
133 [~~his~~] the defendant's mental illness and dangerousness can be adequately controlled with proper
134 care, medication, supervision, and treatment, as described in Subsection [77-16a-304\(4\)\(b\)](#), if
135 [~~he~~] the defendant is conditionally released, the review team shall prepare a report and notify
136 the executive director, or [~~his~~] the executive director's designee, that the defendant is a
137 candidate for conditional release.

138 (2) [~~The~~] Upon receipt of the report described in Subsection (1), the executive director,
139 or [~~his~~] the executive director's designee, shall prepare a conditional release plan[~~, listing~~] that:

140 (a) describes the type of care [~~and treatment that the individual needs and~~
141 ~~recommending~~], supervision, medication, and treatment the defendant needs, taking into
142 account best practices for assessing the defendant's risk of violence; and

143 (b) recommends a treatment provider.

144 (3) The executive director, or [~~his~~] the executive director's designee, shall provide the
145 court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by
146 the review team under Subsection (1), and the conditional release plan described in Subsection
147 (2).

148 (4) (a) The court shall conduct a hearing on the issue of conditional release within 30
149 days after [~~receipt of those documents~~] the day on which the court receives the documents
150 described in Subsection (3).

151 [~~(4)~~] (b) The court [~~may~~] shall order that [~~a~~] the defendant be conditionally released [if

152 it] in accordance with the defendant's conditional release plan if the court finds that, even
153 though the defendant presents a substantial danger to [himself] self or others, [he] the
154 defendant can be adequately controlled with proper care, supervision, medication, and
155 treatment that is available and provided for in the defendant's conditional release plan.

156 (5) (a) The department may provide [treatment] the care, supervision, medication, and
157 treatment described in Subsection (4)(b) in accordance with the defendant's conditional release
158 plan or contract with a local mental health authority or other public or private provider to
159 provide the care, supervision, medication, and treatment[~~for a defendant who is conditionally~~
160 released under this section].

161 (b) A local mental health authority, or other public or private provider that provides
162 care, supervision, medication, and treatment to a defendant who is conditionally released under
163 this section shall immediately notify the executive director, or the executive director's designee,
164 upon learning the defendant is not compliant with the defendant's conditional release plan.

165 (6) (a) If the department receives notice or otherwise finds that the defendant is not
166 compliant with the defendant's conditional release plan, the department may issue an order
167 temporarily revoking the defendant's conditional release and requiring the defendant to
168 immediately submit to the custody of the department.

169 (b) (i) Temporary revocation of a defendant's conditional release under Subsection
170 (6)(a) is effective for seven business days after the day on which the defendant is taken into the
171 custody of the department, unless otherwise ordered by the court.

172 (ii) A peace officer is authorized to take a defendant whose conditional release is
173 temporarily revoked under Subsection (6)(a) into physical custody and transport the defendant
174 to the custody of the department.

175 (c) Upon temporary revocation of a defendant's conditional release, the executive
176 director, or the executive director's designee, shall immediately provide the court, the
177 defendant's attorney, and the prosecuting attorney with written notice of the:

178 (i) temporary revocation; and

179 (ii) reason for the temporary revocation.

180 (7) Before the day on which the court conducts the hearing described in Subsection
181 (8)(a), the review team described in Section [77-16a-304](#) shall review the mental condition of
182 the defendant and provide a report to the court that describes whether the defendant remains a

183 candidate for conditional release under Subsection (1).

184 (8) (a) The court shall conduct an initial hearing within seven business days after the
185 day on which the defendant is taken into the custody of the department and reach an initial
186 determination regarding whether the defendant is a substantial danger to self or others, taking
187 into consideration:

188 (i) the report described in Subsection (7); and

189 (ii) arguments or evidence presented by the parties.

190 (b) If the court determines at the initial hearing described in Subsection (8)(a) that the
191 defendant is not a substantial danger to self or others, the defendant may be released on the
192 defendant's current release plan.

193 (c) (i) If the court determines at the initial hearing described in Subsection (8)(a) that
194 the defendant is a substantial danger to self or others, the court shall order:

195 (A) the defendant detained; and

196 (B) the executive director, or the executive director's designee, to establish a review
197 team that meets the requirements described in Subsection [77-16a-304](#)(1) to review the
198 defendant's mental condition within 30 days after the day on which the court sends notice of the
199 order.

200 (ii) Upon completion of the review described in Subsection (8)(c)(i)(B), the defendant
201 shall be subject to the review and court proceedings described in Section [77-16a-304](#).

202 (d) The court shall order that the defendant be conditionally released in accordance
203 with the defendant's conditional release plan if the court finds that, even though the defendant
204 presents a substantial danger to self or others, the defendant can be adequately controlled with
205 supervision and treatment that is available and provided for in the defendant's conditional
206 release plan.

207 (9) The court clerk shall provide notice of the initial hearing described in Subsection
208 (8)(a) in accordance with Subsection [77-16a-304](#)(3).

209 Section 4. Section **77-16a-306** is amended to read:

210 **77-16a-306. Continuing review -- Discharge.**

211 ~~[(+)-Each]~~ (1) (a) An entity that provides treatment for a defendant committed to the
212 custody of the department as not guilty by reason of insanity under this part shall review the
213 status of each defendant at least once every ~~[six]~~ 12 months.

214 (b) If the treatment provider described in Subsection (1)(a) or a treatment provider
215 providing treatment to a conditionally released defendant under Section 77-16a-305 finds that a
216 defendant has recovered from the defendant's mental illness~~[, or, if]~~ or that the defendant has a
217 mental illness~~;~~ but no longer presents a substantial danger to self or others, ~~[it]~~ the treatment
218 provider shall notify the executive director of [its] the treatment provider's findings.

219 (2) (a) Upon receipt of the notification ~~[under]~~ described in Subsection (1), the
220 executive director shall designate a review team, in accordance with Section 77-16a-304, to
221 evaluate the defendant.

222 (b) If ~~[that]~~ the review team described in Subsection (2)(a) concurs with the treatment
223 provider's assessment, the executive director shall notify the court, the defendant's attorney,
224 ~~[and]~~ the prosecuting attorney, and the victims that the defendant is a candidate for discharge.

225 (c) The court shall conduct a hearing, in accordance with Section 77-16a-302, within
226 ~~[+10 business]~~ 30 days after ~~[receipt of that notice]~~ the day on which the court receives the
227 notice described in Subsection (2)(b).

228 (3) (a) The court may not discharge ~~[an individual]~~ a defendant whose mental illness is
229 in remission as a result of medication or hospitalization if it can be determined within
230 reasonable medical probability that, without continued medication or hospitalization, the
231 defendant's mental illness will reoccur, making the defendant a substantial danger to self or
232 others.

233 (b) Notwithstanding Subsection (3)(a), the defendant described in Subsection (3)(a)
234 may be a candidate for conditional release in accordance with Section 77-16a-305.