

COMMITMENT IN CRIMINAL PROCEEDINGS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses commitment of an individual found guilty with a mental illness.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ upon a plea or verdict of guilty with a mental illness, requires a court to commit the defendant to a local mental health authority for a certain period if the defendant:
 - currently has a certain type of mental illness; and
 - committed a certain type of misdemeanor or infraction;
- ▶ allows the court to require the defendant to pay criminal restitution;
- ▶ requires the court to dismiss the criminal charges against the defendant upon the commitment and restitution orders;
- ▶ requires the county in which the defendant committed the misdemeanor or infraction to cover costs of examination of the defendant's current mental state;
- ▶ requires the local mental health authority to provide care and treatment to the defendant in accordance with civil commitment processes;
- ▶ allows the local mental health authority to:
 - limit the defendant's travel; and
 - move the defendant to a more restrictive environment under certain circumstances; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 77-16a-101, as last amended by Laws of Utah 2011, Chapter 366

36 77-16a-103, as last amended by Laws of Utah 2011, Chapter 366

37 77-16a-104, as last amended by Laws of Utah 2011, Chapter 366

38 77-16a-202, as last amended by Laws of Utah 2011, Chapter 366

39 ENACTS:

40 77-16a-105, Utah Code Annotated 1953

41 77-16a-202.5, Utah Code Annotated 1953



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

44 Section 1. Section 77-16a-101 is amended to read:

45 **77-16a-101. Definitions.**

46 As used in this chapter:

47 (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

48 (2) "Department" means the Department of Human Services.

49 (3) "Executive director" means the executive director of the Department of Human
50 Services.

51 (4) "Mental health facility" means the Utah State Hospital or other facility that
52 provides mental health services under contract with the division, a local mental health
53 authority, or organization that contracts with a local mental health authority.

54 (5) "Mental illness" is as defined in Section 76-2-305.

55 (6) "Minor offense" means an offense that is a misdemeanor or infraction and is not an
56 offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving,
57 or Title 76, Chapter 5, Offenses Against the Person.

58 ~~(6)~~ (7) "Offender with a mental illness" means an individual who has been

59 adjudicated guilty with a mental illness, including an individual who has an intellectual
60 disability.

61 (8) "Offender with a severe mental disorder" means an individual who has been
62 adjudicated guilty with a mental illness and currently has a severe mental disorder.

63 (9) "Severe mental disorder" means the following disorders as described in the current
64 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
65 American Psychiatric Association:

- 66 (a) schizophrenia;
- 67 (b) major depression;
- 68 (c) bipolar disorders;
- 69 (d) delusional disorders;
- 70 (e) psychotic disorders;
- 71 (f) obsessive-compulsive disorders;
- 72 (g) dissociative disorders; and
- 73 (h) neurocognitive disorders.

74 ~~[(7)]~~ (10) "UDC" means the Department of Corrections.

75 Section 2. Section **77-16a-103** is amended to read:

76 **77-16a-103. Plea of guilty with a mental illness at the time of the offense --**
77 **Hearing to determine present mental state -- Sentencing.**

78 (1) ~~[Upon a]~~ Except as provided in Section 77-16a-105, upon a defendant's plea of
79 guilty with a mental illness at the time of the offense ~~[being tendered by a defendant]~~ to any
80 charge, the court shall hold a hearing within a reasonable time to determine whether the
81 defendant currently has a mental illness.

82 (2) (a) ~~[The]~~ To make the determination under Subsection (1), the court may:

- 83 (i) order the department to examine the defendant[;]; and [may]
- 84 (ii) receive the testimony of any public or private expert witness offered by the
85 defendant or the prosecutor.

86 (b) The defendant may be placed in the Utah State Hospital for ~~[that]~~ the examination
87 only upon approval by the executive director.

88 (3) (a) ~~[A]~~ The trial judge shall first examine the defendant ~~[who tenders a plea of~~
89 ~~guilty with a mental illness at the time of the offense shall be examined first by the trial judge;]~~

90 in compliance with the standards for taking pleas of guilty.

91 (b) The trial judge shall advise the defendant [~~shall be advised~~] that a plea of guilty
92 with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.

93 [~~(b)~~] (4) If [~~the defendant is later found not to have a current~~] the court finds the
94 defendant does not currently have a mental illness[~~, that~~]:

95 (a) the defendant's plea remains a valid plea of guilty with a mental illness at the time
96 of the offense[~~;~~]; and

97 (b) the court shall sentence the defendant [~~shall be sentenced~~] as the court would
98 sentence any other [~~offender~~] defendant.

99 [~~(4)~~] (5) If the court [~~concludes~~] finds that the defendant currently has a mental illness,
100 the court shall:

101 (a) accept the defendant's plea [~~shall be accepted and the defendant shall be sentenced~~];
102 and

103 (b) sentence the defendant in accordance with [~~Section~~] Sections 77-16a-104 and
104 77-16a-202.

105 [~~(5)(a) When the offense is a state offense, expenses of examination, observation, and~~
106 ~~treatment for the defendant shall be paid by the department.]~~

107 [~~(b) Travel expenses shall be paid by the county where prosecution is commenced.]~~

108 [~~(c) Expenses of examination for defendants charged with violation of a municipal or~~
109 ~~county ordinance shall be paid by the municipality or county that commenced the prosecution.]~~

110 (6) Except as provided in Section 77-16a-105:

111 (a) if the defendant is charged with a state offense, the department shall pay the
112 expenses of examination, observation, and treatment for the defendant;

113 (b) the county that commenced the prosecution shall pay the travel expenses for the
114 defendant; and

115 (c) if the offense is a municipal or county ordinance, the municipality or county that
116 commenced the prosecution shall pay the expenses of examination for the defendant.

117 Section 3. Section 77-16a-104 is amended to read:

118 **77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine**
119 **present mental state -- Sentencing -- Criteria for commitment.**

120 (1) [~~Upon~~] Except as provided in Section 77-16a-105, upon a verdict of guilty with a

121 mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to
122 determine the defendant's present mental state.

123 ~~[(2) The court may order the department to examine the defendant to determine the~~
124 ~~defendant's mental condition, and may receive the evidence of any public or private expert~~
125 ~~witness offered by the defendant or the prosecutor.]~~

126 (2) (a) To make the determination under Subsection (1), the court may make the order
127 and receive testimony as described in Subsection 77-16a-103(2)(a).

128 (b) The defendant may be placed in the Utah State Hospital for [that] the examination
129 [only upon approval of the executive director] in accordance with Subsection
130 77-16a-103(2)(b).

131 (3) If the court finds that the defendant does not currently have a mental illness, the
132 court shall sentence the defendant as the court would sentence any other defendant.

133 ~~[(3)]~~ (4) If the court finds by clear and convincing evidence that the defendant currently
134 has a mental illness, the court shall:

135 (a) impose any sentence that could be imposed under law upon a defendant who does
136 not have a mental illness and who is convicted of the same offense[~~;~~ and]; and

137 (b) make an order in accordance with Subsection (5).

138 (5) In addition to imposing the sentence under Subsection (4), the court shall:

139 (a) commit the defendant to the department, in accordance with [the provisions of]
140 Section 77-16a-202, if:

141 (i) the court gives the department the opportunity to provide an evaluation and
142 recommendation under Subsection ~~[(4)]~~ (6); and

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

144 (A) because of the defendant's mental illness, the defendant poses an immediate
145 physical danger to self or others, including jeopardizing the defendant's own or others' safety,
146 health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide
147 the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

148 (B) the department is able to provide the defendant with treatment, care, custody, and
149 security that is adequate and appropriate to the defendant's conditions and needs;

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

151 (c) if the court determines that commitment to the department under Subsection

152 ~~[(3)(a)]~~ (5)(a) or probation under Subsection ~~[(3)(b)]~~ (5)(b) is not appropriate, ~~[the court shall]~~
153 place the defendant in the custody of UDC or a county jail as allowed by law.

154 ~~[(4)]~~ (6) In order to ~~[insure]~~ ensure that the requirements of Subsection ~~[(3)]~~ (4)(a) are
155 met, the court shall, before making a determination, notify the executive director of the
156 proposed placement and provide the department with an opportunity to evaluate the defendant
157 and make a recommendation to the court regarding placement ~~[prior to]~~ before commitment.

158 ~~[(5) If the court finds that the defendant does not currently have a mental illness, the court~~
159 ~~shall sentence the defendant as it would any other defendant. (6)]~~ Expenses for ~~[examinations]~~
160 an examination ordered under this section shall be paid in accordance with Subsection
161 ~~[77-16a-103(5)]~~ 77-16a-103(6).

162 Section 4. Section **77-16a-105** is enacted to read:

163 **77-16a-105. Plea or verdict of guilty with a mental illness for certain**
164 **misdemeanors -- Hearing to determine present mental state -- Sentencing -- Criteria for**
165 **commitment.**

166 (1) Notwithstanding Sections [77-16a-103](#) and [77-16a-104](#), upon a defendant's plea of
167 guilty with a mental illness at the time of the offense for a minor offense, or upon a verdict of
168 guilty with a mental illness for a minor offense, the court shall hold a hearing within a
169 reasonable time to determine whether the defendant currently has a severe mental disorder.

170 (2) (a) To make the determination under Subsection (1), the court may make the order
171 and receive testimony in accordance with Subsection [77-16a-103\(2\)\(a\)](#).

172 (b) The defendant may be placed in the Utah State Hospital for the examination in
173 accordance with Subsection [77-16a-103\(2\)\(b\)](#).

174 (3) If the defendant enters a plea described in Subsection (1), the trial judge shall
175 examine and advise the defendant in accordance with Subsection [77-16a-103\(3\)\(a\)](#).

176 (4) If the court finds the defendant does not currently have a severe mental disorder:

177 (a) the defendant's plea described in Subsection (1), if applicable, remains a valid plea
178 of guilty with a mental illness at the time of the offense; and

179 (b) the court shall sentence the defendant in accordance with Subsections
180 [77-16a-103\(4\)](#) and [77-16a-104\(3\)](#).

181 (5) If the court finds by clear and convincing evidence that the defendant currently has
182 a severe mental disorder and meets the criteria described in Subsection [77-16a-104\(5\)\(a\)\(ii\)](#),

183 the court:

184 (a) shall commit the defendant to a local mental health authority in accordance with

185 Section 77-16a-202.5;

186 (b) may require the defendant to pay criminal restitution; and

187 (c) immediately after entering the orders described in Subsections (5)(a) and (b), shall
188 dismiss the charges against the defendant for the minor offense.

189 (6) Expenses for an examination ordered under this section shall be paid by the county
190 in which the defendant committed the offense.

191 Section 5. Section 77-16a-202 is amended to read:

192 **77-16a-202. Individual found guilty with a mental illness -- Commitment to**
193 **department -- Admission to Utah State Hospital.**

194 (1) (a) ~~[It]~~ Except as provided in Section 77-16a-202.5, in sentencing and committing
195 an offender with a mental illness to the department under ~~[Subsection 77-16a-104(3)(a)]~~
196 Subsections 77-16a-104(3) and (4)(a), the court shall:

197 ~~[(a)]~~ (i) sentence the offender to a term of imprisonment and order that ~~[he]~~ the
198 offender be committed to the department and admitted to the Utah State Hospital for care and
199 treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204,
200 making provision for readmission to the Utah State Hospital whenever the requirements and
201 conditions of Section 77-16a-204 are met; or

202 ~~[(b)]~~ (ii) sentence the offender to a term of imprisonment and order that the offender be
203 committed to the department for care and treatment for no more than 18 months, or until the
204 offender's condition has been stabilized to the point that commitment to the department and
205 admission to the Utah State Hospital is no longer necessary to ensure adequate mental health
206 treatment, whichever occurs first.

207 (b) At the expiration of ~~[that time]~~ the commitment period under Subsection (1)(a)(ii),
208 the court may recall the sentence and commitment, and resentence the offender. ~~[A]~~

209 (c) (i) Subject to Subsection (2), the court shall specify the commitment and retention
210 of jurisdiction under ~~[this Subsection (1)(b) shall be specified]~~ Subsection (1)(a)(ii) in the
211 sentencing order.

212 (ii) If ~~[that]~~ the court does not make the specification ~~[is not included]~~ under
213 Subsection (1)(c)(i) in the sentencing order, the court shall sentence the offender ~~[shall be~~

214 committed] in accordance with Subsection (1)(a)(i).

215 (2) (a) The court may not retain jurisdiction, under Subsection (1)(~~(b)~~)(c), over the
216 sentence of an offender with a mental illness who has been convicted of a capital felony.

217 (b) In [~~capital cases~~] a capital case, the court shall make the findings required by this
218 section after the capital sentencing proceeding [~~mandated by~~] under Section 76-3-207.

219 (3) (a) [~~When~~] If an offender is committed to the department and admitted to the Utah
220 State Hospital under Subsection [~~(1)(b)~~] (1)(a)(ii), the department shall provide the court with
221 [~~reports~~] a report of the offender's mental health status prepared in accordance with Section
222 77-16a-203 every six months. [~~Those reports shall be prepared in accordance with the~~
223 ~~requirements of Section 77-16a-203. Additionally, the~~]

224 (b) The court may appoint an independent examiner to assess the mental health status
225 of the offender.

226 (4) The period of commitment to the department and admission to the Utah State
227 Hospital, and any subsequent retransfers to the Utah State Hospital made [~~pursuant to~~] under
228 Section 77-16a-204 may not exceed the maximum sentence imposed on the defendant by the
229 court.

230 (5) Upon expiration of [~~that~~] the maximum sentence, the administrator of the facility
231 where the offender is located may initiate civil proceedings for involuntary commitment in
232 accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A,
233 Chapter 15, [~~Substance Abuse and Mental Health Act~~] Part 6, Utah State Hospital and Other
234 Mental Health Facilities.

235 Section 6. Section 77-16a-202.5 is enacted to read:

236 **77-16a-202.5. Individual found guilty with a mental illness for certain**
237 **misdemeanors -- Commitment to local mental health authority.**

238 (1) In committing a defendant with a severe mental disorder who is found guilty with a
239 mental illness under Section 77-16a-105, the court shall commit the defendant to a local mental
240 health authority for care and treatment for a period of:

241 (a) six months; or

242 (b) if the offender committed a minor offense that is a class A misdemeanor, 12
243 months.

244 (2) Except as provided in Subsections (3) and (4), the local mental health authority

245 shall provide care and treatment to, periodically examine, and release or discharge the
246 defendant in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other
247 Mental Health Facilities.

248 (3) If necessary for treatment of the defendant, the local mental health authority may
249 prohibit the defendant from traveling outside of:

250 (a) the defendant's home;

251 (b) the county in which the defendant resides;

252 (c) the state; or

253 (d) a mental health facility.

254 (4) The local mental health authority may issue an order for the immediate placement
255 of the defendant in a more restrictive environment in accordance with Section [62A-15-637](#):

256 (a) if necessary to prevent the defendant from being a harm to self or others or
257 committing an additional offense;

258 (b) for the reasons described in Subsection [62A-15-637\(3\)\(a\)](#); or

259 (c) if the defendant violates a travel restriction under Subsection (3).