

HB0148S01 compared with HB0148

~~deleted text~~ shows text that was in HB0148 but was deleted in HB0148S01.

inserted text shows text that was not in HB0148 but was inserted into HB0148S01.

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Representative Nelson T. Abbott proposes the following substitute bill:

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~~close the ~~criminal charges~~court case against the defendant upon the commitment and restitution orders;

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- ~~{ → 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;
- ▶ allows the defendant to seek an automatic expungement of the misdemeanor or infraction; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

77-40-102, as last amended by Laws of Utah 2021, Chapters 206 and 260

ENACTS:

77-16a-105, Utah Code Annotated 1953

77-16a-202.5, Utah Code Annotated 1953

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

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

77-16a-101. Definitions.

As used in this chapter:

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

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

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

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

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

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

~~(6)~~ (7) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.

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

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

(a) schizophrenia;

(b) major depression;

(c) bipolar disorders;

(d) delusional disorders;

(e) psychotic disorders;

(f) obsessive-compulsive disorders;

(g) dissociative disorders; and

(h) neurocognitive disorders.

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

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

77-16a-103. Plea of guilty with a mental illness at the time of the offense --

Hearing to determine present mental state -- Sentencing.

(1) ~~Upon a~~ Except as provided in Section 77-16a-105, upon a defendant's plea of

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guilty with a mental illness at the time of the offense [~~being tendered by a defendant~~] to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.

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

(i) order the department to examine the defendant[~~;~~]; and [~~may~~]

(ii) receive the testimony of any public or private expert witness offered by the defendant or the prosecutor.

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

(3) (a) [~~A~~] The trial judge shall first examine the defendant [~~who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge,~~] in compliance with the standards for taking pleas of guilty.

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

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

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

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

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

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

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

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

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

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

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

~~(a) If the defendant is charged with a state offense, the department shall pay the expenses of examination, observation, and treatment for the defendant.~~

~~(b) The county that commenced the prosecution shall pay the travel expenses for the defendant.~~

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

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

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

(1) ~~Upon~~ Except as provided in Section 77-16a-105, upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) if the court determines that commitment to the department under Subsection ~~[(3)(a)]~~ (5)(a) or probation under Subsection ~~[(3)(b)]~~ (5)(b) is not appropriate, ~~[the court shall]~~ place the defendant in the custody of UDC or a county jail as allowed by law.

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

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

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

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

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

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

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

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

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

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

(b) the court shall sentence the defendant in accordance with Subsections 77-16a-103(4) and 77-16a-104(3).

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

(a) shall commit the defendant to a local mental health authority in accordance with Section 77-16a-202.5;

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

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

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

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

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

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

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

~~[(b)]~~ (ii) sentence the offender to a term of imprisonment and order that the offender be

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committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first.

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

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

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

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

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

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

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

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

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

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Mental Health Facilities.

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

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

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

(a) six months; or

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

(2) Except as provided in Subsections (3) and (4), the local mental health authority shall provide care and treatment to, periodically examine, and release or discharge the defendant in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities.

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

(a) the defendant's home;

(b) the county in which the defendant resides;

(c) the state; or

(d) a mental health facility.

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

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

(b) for the reasons described in Subsection 62A-15-637(3)(a); or

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

Section 7. Section 77-40-102 is amended to read:

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the

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requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) (a) "Clean slate eligible case" means a closed guilty but mentally ill case or a case:

(i) where, except as provided in Subsection (5)(c), each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor conviction; or

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40-105(6) and (7) without taking into consideration the exception in Subsection 77-40-105(9); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

(A) at least five years for a class C misdemeanor or an infraction;

(B) at least six years for a class B misdemeanor; and

(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(b) "Clean slate eligible case" includes a case that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(i) except as provided in Subsection (5)(c), each charge within the case is:

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(A) a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor; or

(C) an infraction;

(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); [and]

(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed[-]; and

(iv) the case is not a closed guilty but mentally ill case.

(c) "Clean slate eligible case" does not include a case that is not a closed guilty but mentally ill case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes a criminal accounts receivable, as defined in Section 77-32b-102, that:

(A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or

(B) has not been satisfied according to court records; or

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40-105(2)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Person;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

(H) a domestic violence offense as defined in Section 77-36-1; or

(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor

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other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(6) "Closed guilty but mentally ill case" means a case that:

(a) is closed under Subsection 77-16a-105(5); and

(b) for which at least one year has elapsed from the day on which the case was adjudicated.

~~[(6)]~~ (7) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

~~[(7)]~~ (8) "Department" means the Department of Public Safety established in Section 53-1-103.

~~[(8)]~~ (9) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection ~~[(8)]~~ (9).

~~[(9)]~~ (10) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

~~[(10)]~~ (11) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

~~[(11)]~~ (12) "Minor regulatory offense" means any class B or C misdemeanor offense, and any local ordinance, except:

(a) any drug possession offense;

(b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(c) Sections 73-18-13 through 73-18-13.6;

(d) those offenses defined in Title 76, Utah Criminal Code; or

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(e) any local ordinance that is substantially similar to those offenses listed in Subsections ~~[(11)]~~ (12)(a) through (d).

~~[(12)]~~ (13) "Petitioner" means an individual applying for expungement under this chapter.

~~[(13)]~~ (14) (a) "Traffic offense" means:

(i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;

(ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to those offenses.

(b) "Traffic offense" does not mean:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to the offenses listed in

Subsections ~~[(13)]~~ (14)(b)(i) and (ii).