

## HB0148S03 compared with HB0148S02

~~deleted text~~ shows text that was in HB0148S02 but was deleted in HB0148S03.

inserted text shows text that was not in HB0148S02 but was inserted into HB0148S03.

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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: \_\_\_\_\_

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#### 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;
- ▶ allows the court to require the defendant to pay criminal restitution;
- ▶ requires the court to dismiss the criminal charges against the defendant upon the defendant's completion of the commitment and restitution orders;

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- ▶ 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
- ▶ 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

#### ENACTS:

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

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

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*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.
- (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

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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 a class B or class C misdemeanor offense that is not:

(a) an offense under:

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

(ii) Section 76-4-401, Enticing a minor;

(iii) Title 76, Chapter 5, Offenses Against the Person;

(iv) Title 76, Chapter 5b, Sexual Exploitation Act;

(v) Section 76-9-702.1, Sexual battery;

(vi) Section 76-9-702.5, Lewdness involving a child;

(vii) Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and

Performances;

(viii) Section 76-10-2201, Unlawful body piercing and tattooing of a minor; or

(ix) Section 76-10-2301, Contributing to the delinquency of a minor; or

(b) a domestic violence offense, as defined in Section 77-36-1.

~~(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) "Serious mental illness" means the following mental illnesses as described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorders;

(d) delusional disorders;

(e) psychotic disorders;

(f) obsessive compulsive disorders; and

(g) dissociative disorders.

~~(7)~~ ~~(10)~~ (9) "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 --**

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### Hearing to determine present mental state -- Sentencing.

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

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~~[(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.]~~

(6) (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~~]; 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]

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Section 77-16a-202, if:

- (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.]~~ 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 serious mental illness.

(2) (a) To make the determination under Subsection (1), the court may make the order

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and receive testimony in accordance with Subsection 77-16a-103(2)(a).

(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 serious mental illness:

(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 serious mental illness 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) shall dismiss the charges against the defendant for the minor offense immediately after the day on which the defendant:

(i) completes payment of any criminal restitution required under Subsection (5)(b); and

(ii) is released from the commitment described in Subsection (5)(a).

~~{ (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,

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making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

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



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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 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 serious mental illness 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 six 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).