

MENTALLY ILL OFFENDERS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill concerns a plea of guilty with a mental illness.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies when certain defendants may receive probation, supervised release, or a reduction to a lower category of offense under specified circumstances;
- ▶ amends eligibility, procedures, and requirements concerning a plea of guilty with a mental illness; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-406, as last amended by Laws of Utah 2022, Chapter 181

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

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

REPEALS AND REENACTS:



28 [77-16a-103](#), as last amended by Laws of Utah 2011, Chapter 366

29

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

31 Section 1. Section **76-3-406** is amended to read:

32 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
33 **offense, or hospitalization may not be granted.**

34 (1) Notwithstanding Sections [76-3-201](#) and [77-18-105](#) and Title 77, Chapter 16a,
35 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
36 [76-5-406.5](#) or Subsection [77-16a-103\(6\)](#) or (7), probation may not be granted, the execution or
37 imposition of sentence may not be suspended, the court may not enter a judgment for a lower
38 category of offense, and hospitalization may not be ordered, the effect of which would in any
39 way shorten the prison sentence for an individual who commits a capital felony or a first degree
40 felony involving:

41 (a) Section [76-5-202](#), aggravated murder;

42 (b) Section [76-5-203](#), murder;

43 (c) Section [76-5-301.1](#), child kidnaping;

44 (d) Section [76-5-302](#), aggravated kidnaping;

45 (e) Section [76-5-402](#), rape, if the individual is sentenced under Subsection
46 [76-5-402\(3\)\(b\)](#), (3)(c), or (4);

47 (f) Section [76-5-402.1](#), rape of a child;

48 (g) Section [76-5-402.2](#), object rape, if the individual is sentenced under Subsection
49 [76-5-402.2\(3\)\(b\)](#), (3)(c), or (4);

50 (h) Section [76-5-402.3](#), object rape of a child;

51 (i) Section [76-5-403](#), forcible sodomy, if the individual is sentenced under Subsection
52 [76-5-403\(3\)\(b\)](#), (3)(c), or (4);

53 (j) Section [76-5-403.1](#), sodomy on a child;

54 (k) Section [76-5-404](#), forcible sexual abuse, if the individual is sentenced under
55 Subsection [76-5-404\(3\)\(b\)\(i\)](#) or (ii);

56 (l) Section [76-5-404.3](#), aggravated sexual abuse of a child;

57 (m) Section [76-5-405](#), aggravated sexual assault; or

58 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

59 (2) Except for an offense before the district court in accordance with Section 80-6-502
60 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the
61 defendant:

- 62 (a) was under 18 years old at the time of the offense; and
- 63 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
64 delayed filing of the information.

65 Section 2. Section 77-16a-101 is amended to read:

66 **77-16a-101. Definitions.**

67 As used in this chapter:

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

69 (2) "Department" means the Department of Health and Human Services.

70 (3) "Executive director" means the executive director of the Department of Health and
71 Human Services.

72 (4) "Mental defect" means a congenital condition, the result of an injury, or a residual
73 effect of a physical or mental illness.

74 (5) "Mental disease" means the following mental disorders as described in the most
75 recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
76 American Psychiatric Association:

- 77 (a) schizophrenia;
- 78 (b) schizoaffective disorder;
- 79 (c) bipolar disorder;
- 80 (d) delusional disorder;
- 81 (e) psychotic disorder;
- 82 (f) obsessive compulsive disorder; or
- 83 (g) dissociative disorder.

84 [(4)] (6) "Mental health facility" means the Utah State Hospital or other facility that
85 provides mental health services under contract with the division, a local mental health
86 authority, or organization that contracts with a local mental health authority.

87 [(5)] (7) (a) "Mental illness" [~~is as defined in Section 76-2-305~~] means a mental
88 disease or mental defect that substantially impairs an individual's mental, emotional, or
89 behavioral functioning.

90 (b) "Mental illness" does not include a mental abnormality that is manifested solely by
91 repeated criminal conduct.

92 [(6)] (8) "Offender with a mental illness" means an individual who has been
93 adjudicated guilty with a mental illness, including an individual who has an intellectual
94 disability.

95 [(7)] (9) "UDC" means the Department of Corrections.

96 Section 3. Section **77-16a-103** is repealed and reenacted to read:

97 **77-16a-103. Plea of guilty with a mental illness -- Procedures -- Sentencing --**

98 **Reduction -- Costs.**

99 (1) (a) (i) If a defendant wishes to enter a plea of guilty with a mental illness, the
100 parties may stipulate as to whether:

101 (A) the defendant had a mental illness at the time of the commission of the offense; or

102 (B) the defendant currently has a mental illness.

103 (ii) If the parties stipulate as described in Subsections (1)(a)(i)(A) or (B), the court
104 shall enter findings consistent with the parties' stipulation.

105 (b) If the parties do not stipulate to Subsections (1)(a)(i)(A) and (B), the court shall
106 hold a hearing and determine, by clear and convincing evidence:

107 (i) whether the defendant had a mental illness at the time of the commission of the
108 offense, unless stipulated by the parties; and

109 (ii) whether the defendant currently has a mental illness, unless stipulated by the
110 parties.

111 (c) After reviewing the stipulation described in Subsection (1)(a)(i) or conducting a
112 hearing under Subsection (1)(b):

113 (i) if the court finds that the defendant was mentally ill at the time of the offense, the
114 court may accept the defendant's plea of guilty with a mental illness; or

115 (ii) if the court finds that the defendant was not mentally ill at the time of the offense,
116 the court may not accept the defendant's plea of guilty with a mental illness.

117 (2) (a) If a defendant wishes to enter a plea of guilty with a mental illness for a felony
118 offense and the parties do not stipulate to Subsections (1)(a)(i)(A) and (B), before holding the
119 hearing described in Subsection (1)(b), the court may order the defendant to submit to an
120 examination, which may be conducted only by the department, to determine:

- 121 (i) whether the defendant had a mental illness at the time of the commission of the
122 offense;
- 123 (ii) whether the defendant currently has a mental illness; or
124 (iii) whether the defendant currently is competent to enter a plea.
- 125 (b) (i) If a defendant wishes to enter a plea of guilty with a mental illness for a
126 misdemeanor offense and the parties do not stipulate to Subsections (1)(a)(i)(A) and (B),
127 before holding the hearing described in Subsection (1)(b), the court may order the defendant to
128 submit to an examination by:
- 129 (A) the department; or
130 (B) a person qualified as a designated examiner under Section [62A-15-602](#).
- 131 (ii) Unless otherwise ordered by the court, the examination described in Subsection
132 (2)(b)(i) shall determine:
- 133 (A) whether the defendant had a mental illness at the time of the commission of the
134 offense;
- 135 (B) whether the defendant currently has a mental illness; or
136 (C) whether the defendant currently is competent to enter a plea.
- 137 (3) If a defendant relies on a private mental health evaluation in support of the
138 defendant's plea of guilty with a mental illness and the parties do not stipulate to Subsections
139 (1)(a)(i)(A) and (B), upon the request of the prosecutor before the hearing described in
140 Subsection (1)(b), the court shall order the defendant to submit to an examination by:
- 141 (a) the department if the offense is a felony; or
142 (b) the department or a person qualified as a designated examiner under Section
143 [62A-15-602](#) if the offense is a misdemeanor.
- 144 (4) If a court finds that a defendant was guilty with a mental illness at the time of the
145 offense in accordance with Subsection (1)(c)(i) but does not currently have a mental illness, the
146 court shall hold a sentencing hearing within 45 days of the entry of the defendant's plea of
147 guilty with a mental illness.
- 148 (5) (a) If a court finds that a defendant had a mental illness at the time of the
149 commission of the offense, currently has a mental illness, and has entered a plea of guilty with
150 a mental illness in accordance with Subsection (1)(c)(i), the court:
- 151 (i) shall schedule a treatment review hearing within 30 days after the day on which the

152 court entered the plea of guilty with a mental illness; and

153 (ii) may defer sentencing for up to one year in accordance with Subsection (6).

154 (b) At the treatment review hearing described in Subsection (5)(a)(i), the court shall:

155 (i) consider all diagnosis, treatment, and supervision recommendations; and

156 (ii) order the defendant to comply with all treatment and supervision recommendations
157 that the court finds are in the best interest of the defendant and public safety.

158 (c) (i) In determining treatment and supervision recommendations under Subsection
159 (5)(b), the court may order the defendant to be placed in a secure setting as described in
160 Subsection (5)(c)(ii) if the court finds that the placement would be in the best interest of the
161 defendant, a victim of the defendant, or public safety.

162 (ii) (A) If the offense is a class C misdemeanor or an infraction, the court may not
163 place the defendant in a secure setting for more than 30 days.

164 (B) If the offense is a class B misdemeanor, the court may not place the defendant in a
165 secure setting for more than six months.

166 (C) If the offense is a class A misdemeanor or a felony, the court may place the
167 defendant in a secure setting for up to one year.

168 (d) If the court determines that the defendant is eligible for supervised release as part of
169 the defendant's treatment and supervision recommendations under Subsection (5)(b), except as
170 provided in Section 76-3-406, the court may order:

171 (i) if the offense is a felony, supervision by Adult Probation and Parole or a private
172 supervisor who is approved by the department to supervise a defendant who is guilty with a
173 mental illness; or

174 (ii) if the offense is a misdemeanor, supervision by a local mental health authority or a
175 private supervisor who is approved by the department to supervise a defendant who is guilty
176 with a mental illness.

177 (e) (i) After the initial review hearing described in Subsection (5)(a), the court shall
178 hold periodic review hearings approximately every 90 days, the frequency of which may be
179 modified by the court.

180 (ii) At a review hearing described in Subsection (5)(e)(i):

181 (A) the court shall review the status of the defendant and determine whether any
182 changes are needed to the defendant's supervision or treatment plan; and

183 (B) a party may request, if the party has a good faith basis, that the court review or
184 change the defendant's placement within a secure or non-secure setting.

185 (f) If a defendant is willfully non-compliant with the treatment or supervision ordered
186 by the court under this Subsection (5), the court shall hold an order to show cause hearing to
187 determine whether the court should:

188 (i) proceed with sentencing under Subsection (6);

189 (ii) change the defendant's placement to a secure setting;

190 (iii) impose another sanction; or

191 (iv) take no action.

192 (6) (a) The court shall defer sentencing for a defendant who has pleaded guilty with a
193 mental illness as described in Subsection (5) until:

194 (i) the court determines, after an order to show cause hearing or a review hearing as
195 described in Subsection (5), that:

196 (A) the defendant is non-compliant with treatment or supervision and will not benefit
197 from further ordered treatment; or

198 (B) the defendant has reached the maximum benefit of treatment and supervision; or

199 (ii) one year has elapsed after the day on which the court entered the defendant's plea of
200 guilty with a mental illness.

201 (b) At the sentencing hearing, the court shall:

202 (i) consider all treatment and supervision that has occurred before the sentencing
203 hearing in the defendant's case;

204 (ii) credit any time the defendant has spent in a mental health facility or other
205 residential treatment facility or a secure facility against the defendant's sentence;

206 (iii) consider victim input; and

207 (iv) consider the best interests of the defendant, including which sentence will help
208 prevent the defendant:

209 (A) from losing the defendant's ability to control the defendant's state of mental health;
210 and

211 (B) from committing additional criminal conduct related to the defendant's mental
212 illness.

213 (c) The restrictions described in Section [76-3-406](#) do not apply to a sentence imposed

214 under this section.

215 (7) After a defendant has completed the defendant's sentence and any probation or
216 parole imposed pursuant to this section:

217 (a) notwithstanding the contrary provisions in Subsection 76-3-402(4) or Section
218 76-3-406, the court has jurisdiction to enter a judgment of conviction and shall reduce the
219 judgment of conviction for the offense by two degrees from the original offense; and

220 (b) notwithstanding the contrary provisions in Subsection 76-3-402(4) or Section
221 7-3-406, if the prosecuting attorney specifically agrees in writing or on the court record at any
222 time, the court has jurisdiction to consider and enter a judgment of conviction and may enter a
223 judgment of conviction for the offense that is reduced by up to three degrees from the original
224 offense.

225 (8) (a) When the offense is a state offense, expenses of examination, observation, and
226 treatment for the defendant shall be paid by the department.

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

228 (c) Expenses of examination for a defendant charged with a violation of a municipal or
229 county ordinance shall be paid by the municipality or county that commenced the prosecution.

230 Section 4. Section **77-16a-104** is amended to read:

231 **77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine**
232 **present mental state.**

233 (1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser
234 offense, the court shall conduct a hearing to determine the defendant's present mental state.

235 (2) The court may order the department to examine the defendant to determine the
236 defendant's mental condition, and may receive the evidence of any public or private expert
237 witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah
238 State Hospital for that examination only upon approval of the executive director.

239 (3) If the court finds by clear and convincing evidence that the defendant currently has
240 a mental illness, the court shall impose any sentence that could be imposed under law upon a
241 defendant who does not have a mental illness and who is convicted of the same offense, and:

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

244 (i) the court gives the department the opportunity to provide an evaluation and

245 recommendation under Subsection (4); and

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

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

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

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

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

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

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

263 (6) Expenses for examinations ordered under this section shall be paid in accordance
264 with Subsection [~~77-16a-103(5)~~] [77-16a-103\(8\)](#).