

MENTALLY ILL OFFENDERS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions relating to offenders with a mental condition.

Highlighted Provisions:

This bill:

- ▶ adds specific disorders to a definition of mental illness;
- ▶ provides additional requirements for the provision and use of documents and arrest reports for treatment assessments and hearings relating to mentally ill offenders;
- ▶ clarifies scheduling requirements for competency evaluations and treatment assessments;
- ▶ clarifies when a third party service provider may be used; and
- ▶ makes technical corrections.

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 2023, Chapter 184
- 77-16a-101**, as last amended by Laws of Utah 2023, Chapters 184, 330
- 77-16a-103**, as repealed and reenacted by Laws of Utah 2023, Chapter 184



28

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

30 Section 1. Section **76-2-305** is amended to read:

31 **76-2-305. Mental condition -- Use as a defense -- Influence of alcohol or other**
32 **substance voluntarily consumed.**

33 (1) As used in this section:

34 (a) (i) "Mental condition" means a mental illness or a mental disability that
35 substantially impairs an individual's mental, emotional, or behavioral functioning.

36 (ii) "Mental condition" does not include a mental abnormality that is manifested solely
37 by repeated criminal conduct, anti-social behavior, or a substance use disorder.

38 (b) "Mental disability" means an intellectual disability or a neurodevelopmental
39 disorder as those terms are defined in the current edition of the Diagnostic and Statistical
40 Manual of Mental Disorders published by the American Psychiatric Association.

41 (c) "Mental illness" means the following mental disorders as described in the most
42 recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
43 American Psychiatric Association:

44 (i) schizophrenia spectrum and other psychotic disorders; [~~or~~]

45 (ii) bipolar I disorder;

46 (iii) posttraumatic stress disorder; or

47 [~~(ii)~~] (iv) other serious mental health conditions with psychotic features.

48 (2) (a) It is a defense to a prosecution under any statute or ordinance that the defendant,
49 as a result of a mental condition, lacked the mental state required as an element of the offense
50 charged.

51 (b) A mental condition is not otherwise a defense, but may be evidence in mitigation of
52 the penalty in a capital felony under Section [76-3-207](#) and may be evidence of special
53 mitigation reducing the level of a criminal homicide or attempted criminal homicide offense
54 under Section [76-5-205.5](#).

55 (3) The defense defined in this section includes the defenses known as "insanity" and
56 "diminished mental capacity."

57 (4) A person who asserts a defense of insanity or diminished mental capacity, and who
58 is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled

59 substances, or volatile substances at the time of the alleged offense is not excused from
60 criminal responsibility on the basis of a mental condition if the alcohol or substance caused,
61 triggered, or substantially contributed to the mental condition.

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

63 **77-16a-101. Definitions.**

64 As used in this chapter:

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

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

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

69 (4) "Forensic evaluator" means a licensed mental health professional who is:

70 (a) not involved in the defendant's treatment; and

71 (b) trained and qualified to conduct a guilty with a mental condition evaluation.

72 (5) "Mental condition" means the same as that term is defined in Section [76-2-305](#).

73 (6) "Mental disability" means the same as that term is defined in Section [76-2-305](#).

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

77 (8) "Mental health supervision" includes regular and periodic activities including:

78 (a) the review of a defendant's assessment, diagnostic formulation, individual service
79 plan development, and progress toward completion of care; ~~and~~

80 (b) identification of barriers to a defendant's care, assistance in removing barriers to a
81 defendant's care, continuation of services to a defendant, authorization of care for a defendant,
82 and the observation of the delivery of clinical care to a defendant[-]; and

83 (c) the provision of an update report to a court as required under Subsection
84 [77-16a-103\(5\)\(g\)](#).

85 (9) "Mental illness" means the same as that term is defined in Section [76-2-305](#).

86 (10) "Offender with a mental condition" means an individual who has been adjudicated
87 guilty with a mental condition.

88 (11) "Secure setting" means a jail, prison, or locked inpatient medical facility approved
89 by the department.

90 (12) "UDC" means the Department of Corrections.

91 Section 3. Section 77-16a-103 is amended to read:

92 **77-16a-103. Plea of guilty with a mental condition-- Procedures -- Sentencing --**
93 **Reduction -- Costs.**

94 (1) (a) (i) If a defendant wishes to enter a plea of guilty with a mental condition, the
95 parties may stipulate as to:

96 (A) whether the defendant had a mental condition at the time of the commission of the
97 offense; and

98 (B) whether the defendant could benefit from supervision or treatment.

99 (ii) If the parties stipulate as described in Subsection (1)(a)(i), the court shall enter
100 findings consistent with the parties' stipulation if the stipulation is supported by sufficient
101 evidence.

102 (b) If the parties do not stipulate to Subsection (1)(a)(i)~~];~~:

103 (i) the court shall hold a hearing and determine, by clear and convincing evidence:

104 ~~[(i)]~~ (A) whether the defendant had a mental condition at the time of the commission of
105 the offense; and

106 ~~[(ii)]~~ (B) whether the defendant could benefit from supervision or treatment.

107 (ii)

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

110 (i) if the court finds that the defendant had a mental condition at the time of the
111 offense, the court shall accept the defendant's plea of guilty with a mental condition; or

112 (ii) if the court finds that the defendant did not have a mental condition at the time of
113 the offense, the court may not accept the defendant's plea of guilty with a mental condition.

114 (2) (a) If a defendant wishes to enter a plea of guilty with a mental condition for a
115 felony offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the
116 hearing described in Subsection (1)(b), the court may order the defendant to submit to an
117 examination, which may be conducted only by a forensic evaluator appointed by the
118 department, to determine:

119 (i) whether the defendant had a mental condition at the time of the commission of the
120 offense;

121 (ii) whether the defendant could benefit from supervision or treatment; or

122 (iii) whether the defendant currently is competent to enter a plea.

123 (b) (i) If a defendant wishes to enter a plea of guilty with a mental condition for a
124 misdemeanor offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the
125 hearing described in Subsection (1)(b), the court may order the defendant to submit to an
126 examination by a forensic evaluator.

127 (ii) ~~[Unless otherwise ordered by the court, the]~~ The examination [described in
128 Subsection (2)(b)(i)] shall determine:

129 (A) whether the defendant had a mental condition at the time of the commission of the
130 offense;

131 (B) whether the defendant could benefit from supervision or treatment; or

132 (C) whether the defendant currently is competent to enter a plea.

133 (c) Before an examination is conducted pursuant to Subsection (1)(b) or this
134 Subsection (2):

135 (i) the petitioner or other party, as directed by the court or requested by the department,
136 shall provide to the forensic evaluation provider nonmedical information and materials relevant
137 to a treatment assessment, including the charging document, arrest or incident reports
138 pertaining to the charged offense, known criminal history information, and known prior mental
139 health evaluations and treatments; and

140 (ii) for purposes of a guilty with a mental condition evaluation, a custodian of mental
141 health records pertaining to the defendant, including the defendant's prior mental health
142 evaluations or records relating to the defendant's substance use disorder, may provide the
143 records to:

144 (A) with the defendant's consent, a forensic evaluation provider or the department on
145 the department's request; or

146 (B) pursuant to an order of the court, a forensic evaluation provider.

147 (3) (a) If a defendant relies on a private mental health evaluation in support of the
148 defendant's plea of guilty with a mental condition and the parties do not stipulate to Subsection
149 (1)(a)(i), upon the request of the prosecutor before the hearing described in Subsection (1)(b),
150 the court shall order the defendant to submit to an examination by:

151 ~~[(a)]~~ (i) the department if the offense is a felony; or

152 ~~[(b)]~~ (ii) the department or a forensic evaluator if the offense is a misdemeanor.

153 (b) The petitioner or other party, as directed by the court or requested by the
154 department, shall provide to the private mental health evaluation provider nonmedical
155 information and materials relevant to a treatment assessment, including the charging document,
156 arrest or incident reports pertaining to the charged offense, known criminal history information,
157 and known prior mental health evaluations and treatments.

158 (c) For purposes of a guilty with a mental condition evaluation, a custodian of mental
159 health records pertaining to the defendant, including the defendant's prior mental health
160 evaluations or records relating to the defendant's substance use disorder, may provide the
161 records to:

162 (i) with the defendant's consent, a private mental health evaluation provider or the
163 department on the department's request; or

164 (ii) pursuant to an order of the court, a private mental health evaluation provider.

165 (4) If a court finds that a defendant was guilty with a mental condition at the time of
166 the offense in accordance with Subsection ~~[(1)(e)(i)]~~ (1)(e)(i) but would not benefit from
167 available supervision or treatment, the court shall hold a sentencing hearing within 45 days of
168 the entry of the defendant's plea of guilty with a mental condition.

169 (5) (a) If a court finds that a defendant had a mental condition at the time of the
170 commission of the offense, the defendant could benefit from supervision or treatment, and has
171 entered a plea of guilty with a mental condition in accordance with Subsection ~~[(1)(e)(i)]~~
172 (1)(e)(i), the court:

173 (i) shall order:

174 (A) the department to provide a treatment assessment of the defendant and to submit to
175 the court treatment recommendations for the defendant; or

176 (B) the defendant to arrange for a treatment assessment of the defendant with a private
177 provider and for the private provider to submit to the court treatment recommendations for the
178 defendant;

179 (ii) shall schedule a treatment review hearing within 30 days after the day on which the
180 court entered the plea of guilty with a mental condition; and

181 (iii) may defer sentencing for up to one year in accordance with Subsection (6), if the
182 defendant consents to a deferred sentence.

183 (b) The petitioner or other party, as directed by the court or requested by the
 184 department, shall provide to the treatment assessment provider nonmedical information and
 185 materials relevant to a treatment assessment, including the charging document, arrest or
 186 incident reports pertaining to the charged offense, known criminal history information, and
 187 known prior mental health evaluations and treatments.

188 (c) For purposes of a guilty with a mental condition treatment assessment, a custodian
 189 of mental health records pertaining to the defendant, including the defendant's prior mental
 190 health evaluations or records relating to the defendant's substance use disorder, may provide the
 191 records to:

192 (i) with the defendant's consent, a treatment assessment provider or the department on
 193 the department's request; or

194 (ii) pursuant to an order of the court, a treatment assessment provider.

195 ~~[(b)]~~ (d) At the treatment review hearing described in Subsection (5)(a)(ii), the court
 196 shall:

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

198 (ii) if a party does not agree with treatment recommendations issued by the department
 199 under Subsection (5)(a)(i)(A), hold a hearing on the issue of the department's recommendations
 200 and make appropriate modifications to the recommendations if necessary; and

201 (iii) order the defendant to comply with all treatment and supervision recommendations
 202 that ~~[the court finds]~~ are in the best interest of the defendant and public safety.

203 ~~[(e)]~~ (e) (i) In determining treatment and supervision recommendations under
 204 Subsection ~~[(5)(b)]~~ (5)(d), the court may order the defendant to be placed in a secure setting as
 205 described in Subsections ~~[(5)(c)(ii) and (iii)]~~ (5)(e)(ii) and (iii) if the court finds that the
 206 placement would be in the best interest of the defendant, a victim of the defendant, or public
 207 safety.

208 (ii) (A) If the offense is a class C misdemeanor, the court may not place the defendant
 209 in a secure setting for more than 90 days.

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

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

214 (iii) The court shall, before making a determination as to a secure setting placement,
215 notify the executive director of the proposed placement and provide the department with an
216 opportunity to:

217 (A) evaluate the defendant; and

218 (B) make a recommendation regarding placement to the court.

219 ~~[(d)]~~ (f) If the court determines that the defendant is eligible for supervised release as
220 part of the defendant's treatment and supervision recommendations under Subsection ~~[(5)(b)]~~
221 (5)(d), except as provided in Section 76-3-406, the court may order:

222 (i) if the offense is a felony:

223 (A) supervision by Adult Probation and Parole, or a third party that is approved by
224 Adult Probation and Parole, for a period of up to one year in accordance with the applicable
225 supervision provisions described in Title 64, Chapter 13, Department of Corrections - State
226 Prison; ~~[or]~~ and

227 (B) ~~[supervision including]~~ mental health supervision by:

228 (I) the department or a local mental health authority; or

229 (II) if the court determines that it is appropriate, a public or private entity that provides
230 mental or behavioral health services and is approved by the department ~~[or the court]~~; or

231 (ii) if the offense is a misdemeanor, ~~[supervision including]~~ mental health supervision
232 by:

233 (A) a local mental health authority; or

234 (B) if the court determines that it is appropriate, a public or private entity that provides
235 mental or behavioral health services and is approved by the department ~~[or the court]~~.

236 ~~[(e)]~~ (g) (i) After the initial review hearing described in Subsection (5)(a), the court
237 shall hold periodic review hearings approximately every 90 days, the frequency of which may
238 be modified by the court.

239 (ii) At a review hearing described in Subsection ~~[(5)(e)(i)]~~ (5)(g)(i):

240 (A) the department or the department's designee shall report on the progress of the
241 defendant, provide recommendations for the defendant's future care, treatment, and secure or
242 unsecure placement, and advise the court on the medical necessity of treatments for the
243 defendant;

244 (B) the court shall review the status of the defendant and determine whether any

245 changes are needed to the defendant's supervision or treatment plan; and

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

248 ~~[(f)]~~ (h) If a defendant is willfully non-compliant with the treatment or supervision
249 ordered by the court under this Subsection (5), the court shall hold an order to show cause
250 hearing to determine whether the court should:

- 251 (i) proceed with sentencing under Subsection (6);
- 252 (ii) change the defendant's placement to a secure setting;
- 253 (iii) impose another sanction; or
- 254 (iv) take no action.

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

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

259 (A) the defendant is willfully non-compliant with treatment or supervision and is
260 unlikely to become compliant with further ordered treatment or supervision; or

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

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

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

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

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

269 (iii) consider victim input;

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

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

273 and

274 (B) from committing additional criminal conduct related to the defendant's mental
275 condition;

276 (v) consider the best interest of public safety; and

277 (vi) consider any other relevant factor or circumstance.

278 (7) (a) Except as provided in Subsection [~~(7)(c)~~] (7)(b), after a defendant who has been
279 sentenced under Subsection (6) has completed the defendant's sentence and any probation or
280 parole:

281 [~~(a)~~] (i) notwithstanding the contrary provisions in Subsection 76-3-402(4) or
282 76-3-406(1), the court has jurisdiction to enter a judgment of conviction and shall reduce the
283 judgment of conviction for the offense by two degrees from the original offense; and

284 [~~(b)~~] (ii) notwithstanding the contrary provisions in Subsection 76-3-402(4) or
285 76-3-406(1), if the prosecuting attorney specifically agrees in writing or on the court record at
286 any time, the court has jurisdiction to consider and enter a judgment of conviction and may
287 enter a judgment of conviction for the offense that is reduced by up to three degrees from the
288 original offense.

289 [~~(c)~~] (b) If a defendant's probation is revoked and any suspended sentence is imposed,
290 the defendant may not receive a reduction under this Subsection (7).

291 (8) (a) (i) Except as provided in Subsection (8)(a)(iv), when the offense is a state
292 offense, expenses of examination, observation, and treatment for the defendant shall be paid by
293 the department when not paid for by the defendant's insurance.

294 (ii) Travel expenses shall be paid by the county where prosecution is commenced.

295 (iii) Expenses of examination for a defendant charged with a violation of a municipal
296 or county ordinance shall be paid by the municipality or county that commenced the
297 prosecution.

298 (iv) The department is not responsible for payment for an evaluation described in
299 Subsection [~~(3)(b)~~] (3)(a)(ii) that is conducted by a forensic evaluator who is privately retained
300 by a party.

301 (b) (i) Provisions in this part for the support at public expense of a defendant with a
302 mental condition do not release an insurer of a defendant with a mental condition from liability
303 for the care or treatment of the defendant with a mental condition.

304 (ii) The department is authorized to collect amounts spent on a defendant with a mental
305 condition from an insurer of the defendant with a mental condition.

306 (iii) A health insurance company may not deny coverage for court-ordered treatment or

307 supervision of a defendant with a mental condition solely based on the fact that the treatment or
308 supervision is ordered by a court if the treatment or supervision is medically necessary and
309 would otherwise be a covered benefit under the defendant's insurance plan.

310 (9) A guilty with a mental condition evaluation conducted under this section is also
311 subject to the procedural requirements of Subsections [77-15-5\(8\)](#) through (11) and
312 [77-15-6\(4\)\(a\)](#).

313 Section 4. **Effective date.**

314 This bill takes effect on May 1, 2024.