

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;
- ▶ 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;
- ▶ 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



26 ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **77-16a-101**, as last amended by Laws of Utah 2011, Chapter 366

34 **77-16a-103**, as last amended by Laws of Utah 2011, Chapter 366

35 **77-16a-104**, as last amended by Laws of Utah 2011, Chapter 366

36 **77-16a-202**, as last amended by Laws of Utah 2011, Chapter 366

37 ENACTS:

38 **77-16a-105**, Utah Code Annotated 1953

39 **77-16a-202.5**, Utah Code Annotated 1953



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

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

43 **77-16a-101. Definitions.**

44 As used in this chapter:

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

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

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

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

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

53 (6) "Minor offense" means a class B or class C misdemeanor offense that is not:

54 (a) an offense under:

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

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

- 57 (iii) Title 76, Chapter 5, Offenses Against the Person;
- 58 (iv) Title 76, Chapter 5b, Sexual Exploitation Act;
- 59 (v) Section 76-9-702.1, Sexual battery;
- 60 (vi) Section 76-9-702.5, Lewdness involving a child;
- 61 (vii) Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and
- 62 Performances;
- 63 (viii) Section 76-10-2201, Unlawful body piercing and tattooing of a minor; or
- 64 (ix) Section 76-10-2301, Contributing to the delinquency of a minor; or
- 65 (b) a domestic violence offense, as defined in Section 77-36-1.

66 [(6)] (7) "Offender with a mental illness" means an individual who has been
 67 adjudicated guilty with a mental illness, including an individual who has an intellectual
 68 disability.

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

- 72 (a) schizophrenia;
- 73 (b) schizoaffective disorder;
- 74 (c) bipolar disorders;
- 75 (d) delusional disorders;
- 76 (e) psychotic disorders;
- 77 (f) obsessive compulsive disorders; and
- 78 (g) dissociative disorders.

79 [(7)] (9) "UDC" means the Department of Corrections.

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

81 **77-16a-103. Plea of guilty with a mental illness at the time of the offense --**
 82 **Hearing to determine present mental state -- Sentencing.**

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

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

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

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

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

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

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

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

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

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

104 [~~(4)~~] (5) If the court [~~concludes~~] finds that the defendant currently has a mental illness,
105 the court shall:

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

108 (b) sentence the defendant in accordance with [~~Section~~] Sections 77-16a-104 and
109 77-16a-202.

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

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

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

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

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

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

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

122 **77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine**
 123 **present mental state -- Sentencing -- Criteria for commitment.**

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

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

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

132 (b) The defendant may be placed in the Utah State Hospital for [that] the examination
 133 [only upon approval of the executive director] in accordance with Subsection
 134 77-16a-103(2)(b).

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

137 ~~[(3)]~~ (4) If the court finds by clear and convincing evidence that the defendant currently
 138 has a mental illness, the court shall:

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

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

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

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

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

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

148 (A) because of the defendant's mental illness, the defendant poses an immediate
 149 physical danger to self or others, including jeopardizing the defendant's own or others' safety,

150 health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide
151 the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

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

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

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

158 ~~[(4)]~~ (6) In order to ~~[insure]~~ ensure that the requirements of Subsection ~~[(3)]~~ (4)(a) are
159 met, the court shall, before making a determination, notify the executive director of the
160 proposed placement and provide the department with an opportunity to evaluate the defendant
161 and make a recommendation to the court regarding placement ~~[prior to]~~ before commitment.

162 ~~[(5) If the court finds that the defendant does not currently have a mental illness, the court~~
163 ~~shall sentence the defendant as it would any other defendant. (6)]~~ Expenses for ~~[examinations]~~
164 an examination ordered under this section shall be paid in accordance with Subsection
165 ~~[77-16a-103(5)]~~ 77-16a-103(6).

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

167 **77-16a-105. Plea or verdict of guilty with a mental illness for certain**
168 **misdemeanors -- Hearing to determine present mental state -- Sentencing -- Criteria for**
169 **commitment.**

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

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

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

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

180 (4) If the court finds the defendant does not currently have a serious mental illness:

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

183 (b) the court shall sentence the defendant in accordance with Subsections
 184 77-16a-103(4) and 77-16a-104(3).

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

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

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

191 (c) shall dismiss the charges against the defendant for the minor offense immediately
 192 after the day on which the defendant:

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

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

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

196 **77-16a-202. Individual found guilty with a mental illness -- Commitment to**
 197 **department -- Admission to Utah State Hospital.**

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

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

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

211 (b) At the expiration of ~~that time~~ the commitment period under Subsection (1)(a)(ii),

212 the court may recall the sentence and commitment, and resentence the offender. [A]

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

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

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

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

223 (3) (a) [~~When~~] If an offender is committed to the department and admitted to the Utah
224 State Hospital under Subsection [~~(1)(b)~~] (1)(a)(ii), the department shall provide the court with
225 [~~reports~~] a report of the offender's mental health status prepared in accordance with Section
226 77-16a-203 every six months. [~~Those reports shall be prepared in accordance with the~~
227 ~~requirements of Section 77-16a-203. Additionally, the~~]

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

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

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

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

240 **77-16a-202.5. Individual found guilty with a mental illness for certain**
241 **misdeemeanors -- Commitment to local mental health authority.**

242 (1) In committing a defendant with a serious mental illness who is found guilty with a

243 mental illness under Section [77-16a-105](#), the court shall commit the defendant to a local mental
244 health authority for care and treatment for a period of six months.

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

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

- 251 (a) the defendant's home;
- 252 (b) the county in which the defendant resides;
- 253 (c) the state; or
- 254 (d) a mental health facility.

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

- 257 (a) if necessary to prevent the defendant from being a harm to self or others or
258 committing an additional offense;
- 259 (b) for the reasons described in Subsection [62A-15-637\(3\)\(a\)](#); or
- 260 (c) if the defendant violates a travel restriction under Subsection (3).