

INSANITY DEFENSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the criminal defense of not guilty by reason of insanity.

Highlighted Provisions:

This bill:

- ▶ modifies the circumstances under which a defendant may plead not guilty to a criminal offense by reason of insanity;
- ▶ modifies provisions relating to supervision, assessment, and release of a defendant committed to the Department of Human Services after being found not guilty of a criminal offense by reason of insanity; and
- ▶ makes technical changes.

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 2016, Chapter 115

77-16a-304, as last amended by Laws of Utah 2011, Chapter 366

77-16a-305, as last amended by Laws of Utah 1993, Chapter 285



28 **77-16a-306**, as last amended by Laws of Utah 2011, Chapter 366



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

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

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

34 (1) (a) It is a defense to a prosecution under any statute or ordinance that, at the time of
35 the commission of the offense, the defendant, as a result of mental illness, [~~lacked the mental~~
36 ~~state required as an element of the offense charged.~~] was unable to appreciate the nature and
37 quality or the wrongfulness of the defendant's actions.

38 (b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the
39 penalty in a capital felony under Section **76-3-207** and may be evidence of special mitigation
40 reducing the level of a criminal homicide or attempted criminal homicide offense under
41 Section **76-5-205.5**.

42 (2) The defense defined in this section includes the defenses known as "insanity" and
43 "diminished mental capacity."

44 (3) A [~~person~~] defendant who asserts a defense of insanity or diminished mental
45 capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol,
46 controlled substances, or volatile substances at the time of the alleged offense is not excused
47 from criminal responsibility on the basis of mental illness if the alcohol or substance caused,
48 triggered, or substantially contributed to the defendant's mental illness.

49 (4) As used in this section:

50 (a) "Intellectual disability" means a significant subaverage general intellectual
51 functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to
52 age 22.

53 (b) (i) "Mental illness" means a mental disease or defect that substantially impairs a
54 person's mental, emotional, or behavioral functioning. A mental defect may be a congenital
55 condition, the result of injury, or a residual effect of a physical or mental disease and includes,
56 but is not limited to, intellectual disability.

57 (ii) "Mental illness" does not mean an abnormality manifested primarily by repeated
58 criminal conduct.

59 Section 2. Section **77-16a-304** is amended to read:

60 **77-16a-304. Review after commitment.**

61 (1) (a) The executive director, or the executive director's designee, shall establish a
62 review team of at least three qualified staff members to review the defendant's mental condition
63 at least every six months.

64 (b) The review team described in [~~Subsection (1)(a)~~] this subsection shall include:

65 (i) at least one psychiatrist; and

66 (ii) if the defendant has an intellectual disability, at least one staff member who is a
67 designated intellectual disability professional.

68 (2) If the review team described in Subsection (1) finds that the defendant has
69 recovered from the defendant's mental illness, or, that the defendant still has a mental illness
70 but does not present a substantial danger to self or others, the executive director, or the
71 executive director's designee, shall:

72 (a) notify the court that committed the defendant that the defendant is a candidate for
73 discharge; and

74 (b) provide the court with a report stating the facts that form the basis for the
75 recommendation.

76 (3) (a) The court shall conduct a hearing within 10 business days after receipt of the
77 [~~executive director's, or the executive director's designee's,~~] notification described in
78 Subsection (2).

79 (b) The court clerk shall provide notice of the date and time of the hearing to:

80 (i) the prosecuting attorney;

81 (ii) the defendant's attorney; and

82 (iii) any victim of the crime for which the defendant was found not guilty by reason of
83 insanity.

84 (4) (a) The court shall order that the defendant be discharged from commitment in
85 accordance with Section 77-16a-306 if the court finds that the defendant:

86 (i) no longer has a mental illness; or

87 (ii) has a mental illness, but no longer presents a substantial danger to self or others.

88 (b) The court shall order the [~~person~~] defendant be conditionally released in accordance
89 with Section 77-16a-305 if the court finds that the defendant:

90 (i) has a mental illness;
91 (ii) is a substantial danger to self or others; and
92 (iii) can be [~~controlled~~] adequately controlled if conditionally released with treatment
93 and supervision as a condition of release.

94 (c) The court shall order that the commitment be continued if the court finds that the
95 defendant:

96 (i) has not recovered from the defendant's mental illness;
97 (ii) is a substantial danger to self or others; and
98 (iii) cannot [~~adequately~~] be adequately controlled if conditionally released [~~on~~] with
99 treatment and supervision as a condition of release.

100 (d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a
101 defendant whose mental illness is in remission as a result of medication or hospitalization if it
102 can be determined within reasonable medical probability that without continued medication or
103 hospitalization the defendant's mental illness will reoccur, making the defendant a substantial
104 danger to self or others.

105 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection
106 (4)(d)(i) may be a candidate for conditional release, in accordance with Section [77-16a-305](#).
107 Section 3. Section **77-16a-305** is amended to read:

108 **77-16a-305. Conditional release.**

109 (1) If the review team described in Section [77-16a-304](#) finds that a defendant is not
110 eligible for discharge, in accordance with Section [77-16a-304](#), but that [~~his~~] the defendant's
111 mental illness and dangerousness can be adequately controlled with proper care, medication,
112 supervision, and treatment if [~~he~~] the defendant is conditionally released, the review team shall
113 prepare a report and notify the executive director, or [~~his~~] the executive director's designee, that
114 the defendant is a candidate for conditional release.

115 (2) [~~The~~] Upon receipt of the report described in Subsection (1), the executive director,
116 or [~~his~~] the executive director's designee, shall prepare a conditional release plan~~[, listing]~~ that
117 describes the type of care, supervision, and treatment that the [~~individual~~] defendant needs,
118 taking into account best practices for assessing the defendant's risk of violence, and
119 [recommending] recommends a treatment provider.

120 (3) The executive director, or [~~his~~] the executive director's designee, shall provide the

121 court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by
122 the review team under Subsection (1), and the conditional release plan described in Subsection
123 (2).

124 (4) (a) The court shall conduct a hearing on the issue of conditional release within 30
125 days after ~~[receipt of those documents]~~ the day on which the court receives the documents
126 described in Subsection (3).

127 ~~[(4)]~~ (b) The court ~~[may]~~ shall order that ~~[a]~~ the defendant be conditionally released in
128 accordance with the defendant's conditional release plan if ~~[it]~~ the court finds that, even though
129 the defendant presents a substantial danger to ~~[himself]~~ self or others, ~~[he]~~ the defendant can be
130 adequately controlled with supervision and treatment that is available and provided for in the
131 defendant's conditional release plan.

132 (5) (a) The department may provide the treatment provided for in the defendant's
133 conditional release plan or contract with a local mental health authority or other public or
134 private provider to provide the treatment ~~[for a defendant who is conditionally released under~~
135 ~~this section]~~.

136 (b) A local mental health authority or other public or private provider that provides
137 treatment to a defendant who is conditionally released under this section shall immediately
138 notify the executive director, or the executive director's designee, upon learning the defendant
139 is not compliant with the defendant's conditional release plan.

140 (6) The department shall supervise a defendant who is conditionally released under this
141 section in accordance with the defendant's conditional release plan.

142 (7) (a) The department may temporarily revoke a defendant's conditional release and
143 immediately place the defendant into custody of the department if the defendant is not
144 compliant with the terms of the defendant's conditional release plan.

145 (b) (i) A temporary revocation of a defendant's conditional release under Subsection
146 (7)(a) is effective for three business days after the day on which the department issues the
147 order, unless otherwise ordered by the court.

148 (ii) A peace officer is authorized to take a defendant whose conditional release has
149 been temporarily revoked under Subsection (7)(a) into physical custody and transport the
150 defendant to the custody of the department.

151 (c) Upon temporary revocation of a defendant's conditional release, the executive

152 director, or the executive director's designee, shall immediately provide the court, the
153 defendant's attorney, and the prosecuting attorney written notice of:

154 (i) the temporary revocation; and

155 (ii) the reason for the temporary revocation.

156 (d) Before the day on which the court conducts the hearing described in Subsection
157 (7)(e), the review team described in Section 77-16a-304 shall review the mental condition of
158 the defendant and provide a report to the court that describes whether the defendant is still a
159 candidate for conditional release.

160 (e) (i) The court shall conduct a hearing on the issue of the temporary revocation of the
161 defendant's conditional release within three business days after the day on which the court
162 receives the order for the temporary revocation of the defendant's conditional release from the
163 department.

164 (ii) The court clerk shall provide notice of the hearing on the issue of temporary
165 revocation of the defendant's conditional release in accordance with Subsection 77-16a-304(3).

166 Section 4. Section **77-16a-306** is amended to read:

167 **77-16a-306. Continuing review -- Discharge.**

168 (1) (a) ~~[Each]~~ An entity that provides treatment for a defendant committed to the
169 custody of the department as not guilty by reason of insanity under this part shall review the
170 status of each defendant at least once every six months.

171 (b) If the treatment provider described in Subsection (1)(a) or a treatment provider
172 providing treatment to a conditionally released defendant under Section 77-16a-305 finds that a
173 defendant has recovered from the defendant's mental illness, or, if the defendant has a mental
174 illness, no longer presents a substantial danger to self or others, ~~[it]~~ the treatment provider shall
175 notify the executive director of ~~[its]~~ the treatment provider's findings.

176 (2) (a) Upon receipt of the notification under Subsection (1), the executive director
177 shall designate a review team, in accordance with Section **77-16a-304**, to evaluate the
178 defendant.

179 ~~(b) [If that review team]~~ If the review team described in Subsection (2)(a) concurs with
180 the treatment provider's assessment, the executive director shall notify the court, the
181 defendant's attorney, and the prosecuting attorney that the defendant is a candidate for
182 discharge.

183 (c) The court shall conduct a hearing, in accordance with Section 77-16a-302, within
184 10 business days after ~~[receipt of that notice]~~ the day on which the court receives the notice
185 described in Subsection (2)(b).

186 (3) The court may not discharge ~~[an individual]~~ a defendant whose mental illness is in
187 remission as a result of medication or hospitalization if it can be determined within reasonable
188 medical probability that without continued medication or hospitalization the defendant's mental
189 illness will reoccur, making the defendant a substantial danger to self or others.