

Representative Carol Spackman Moss proposes the following substitute bill:

INSANITY DEFENSE AMENDMENTS

2020 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 first degree or capital felony by reason of insanity;
- ▶ places the burden of proof on a defendant asserting a defense of not guilty by reason of insanity to a first degree or capital felony charge;
- ▶ 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;
- ▶ provides that a judge presiding over the prosecution of an individual asserting the defense of not guilty by reason of insanity may exercise discretion in ordering the Department of Health to conduct a mental examination of the defendant; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-2-305**, as last amended by Laws of Utah 2016, Chapter 115

31 **77-16a-301**, as last amended by Laws of Utah 2019, Chapter 312

32 **77-16a-304**, as last amended by Laws of Utah 2011, Chapter 366

33 **77-16a-305**, as last amended by Laws of Utah 1993, Chapter 285

34 **77-16a-306**, as last amended by Laws of Utah 2011, Chapter 366



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

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

38 **76-2-305. Mental illness -- Use as a defense -- Burden of proof -- Influence of**
39 **alcohol or other substance voluntarily consumed -- Definition.**

40 ~~[(1) (a) It is a defense to a prosecution under any statute or ordinance that the~~
41 ~~defendant, as a result of mental illness, lacked the mental state required as an element of the~~
42 ~~offense charged.]~~

43 (1) As used in this section:

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

47 (b) (i) "Mental illness" means a mental disease or defect that substantially impairs an
48 individual's mental, emotional, or behavioral functioning, and may include a mental disease or
49 defect caused by a congenital condition, injury, or physical or mental disease.

50 (ii) "Mental illness" includes an intellectual disability.

51 (iii) "Mental illness" does not include an antisocial personality disorder as defined in
52 the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by
53 the American Psychiatric Association.

54 (c) "Wrongfulness" means legal wrongfulness or moral wrongfulness.

55 (2) (a) It is a defense to a first degree or capital felony charge that the defendant, as a
56 result of mental illness, was unable to appreciate the nature and quality or the wrongfulness of

57 the defendant's actions.

58 (b) It is a defense to a criminal charge that is not a first degree or capital felony that the
 59 defendant, as a result of mental illness, lacked the mental state required as an element of the
 60 offense charged.

61 (3) A defendant asserting the defense described in Subsection (2)(a) has the burden of
 62 pleading and proving by clear and convincing evidence the facts necessary to entitle the
 63 defendant to be found not guilty under this section.

64 ~~[(b)]~~ (4) Mental illness is not otherwise a defense, but may be evidence in mitigation of
 65 the penalty in a capital felony under Section 76-3-207 and may be evidence of special
 66 mitigation reducing the level of a criminal homicide or attempted criminal homicide offense
 67 under Section 76-5-205.5.

68 ~~[(2)]~~ (5) ~~[The defense defined in this section]~~ Each defense described in Subsection (2)
 69 includes the defenses known as "insanity" and "diminished mental capacity."

70 ~~[(3) A person]~~ (6) A defendant who asserts a defense of insanity or diminished mental
 71 capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol,
 72 controlled substances, or volatile substances at the time of the alleged offense is not excused
 73 from criminal responsibility on the basis of mental illness if the alcohol or substance caused~~;~~
 74 ~~triggered;~~ or substantially contributed to ~~[the mental illness:]~~:

75 (a) the defendant's inability to appreciate the nature and quality or the wrongfulness of
 76 the defendant's actions as described in Subsection (2)(a); or

77 (b) the defendant lacking the mental state required as an element of the offense charged
 78 as described in Subsection (2)(b).

79 ~~[(4) As used in this section:]~~

80 ~~[(a) "Intellectual disability" means a significant subaverage general intellectual~~
 81 ~~functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to~~
 82 ~~age 22.]~~

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

87 ~~[(ii) "Mental illness" does not mean an abnormality manifested primarily by repeated~~

88 ~~criminal conduct.]~~

89 Section 2. Section **77-16a-301** is amended to read:

90 **77-16a-301. Mental examination of defendant.**

91 (1) (a) When the court receives notice that a defendant intends to claim that the
92 defendant is not guilty by reason of insanity or that the defendant had diminished mental
93 capacity, or that the defendant intends to assert special mitigation under Subsection
94 **76-5-205.5(2)(a)**, the court ~~shall~~ may order the department to examine the defendant and
95 investigate the defendant's mental condition.

96 (b) The person or organization directed by the department to conduct the examination
97 shall testify at the request of the court or either party in a proceeding in which the testimony is
98 otherwise admissible.

99 (c) Pending trial, unless the court or the executive director directs otherwise, the
100 defendant shall be retained in the same custody or status the defendant was in at the time the
101 examination was ordered.

102 (2) (a) The defendant shall be available and shall fully cooperate in the examination by
103 the department and other independent examiners for the defense and the prosecuting attorney.

104 (b) If the defendant fails to be available and to fully cooperate, and that failure is
105 established to the satisfaction of the court at a hearing prior to trial, the defendant is barred
106 from presenting expert testimony relating to the defendant's defense of mental illness at the
107 trial of the case.

108 (c) The department shall complete the examination within 30 days after the court's
109 order, and shall prepare and provide to the court prosecutor and defense counsel a written
110 report concerning the condition of the defendant.

111 (3) Within 10 days after receipt of the report described in Subsection (2)(c) from the
112 department, but not later than five days before the trial of the case, or at any other time the
113 court directs, the prosecuting attorney shall file and serve upon the defendant a notice of
114 rebuttal of the defense of mental illness, which shall contain the names of witnesses the
115 prosecuting attorney proposes to call in rebuttal.

116 (4) The report of another independent examiner is admissible as evidence upon
117 stipulation of the prosecution and defense.

118 (5) (a) This section does not prevent a party from producing other testimony as to the

119 mental condition of the defendant.

120 (b) An expert witness who is not appointed by the court is not entitled to compensation
121 under Subsection (7).

122 (6) This section does not require the admission of evidence not otherwise admissible.

123 (7) (a) The department shall pay the expenses of an examination ordered by the court
124 under this section.

125 (b) The department shall charge the county where the prosecution is commenced for
126 travel expenses associated with an examination incurred by a defendant.

127 (c) The department shall charge the entity commencing the prosecution for an
128 examination of a defendant charged with a violation of a municipal or county ordinance.

129 Section 3. Section ~~77-16a-304~~ is amended to read:

130 **77-16a-304. Review after commitment.**

131 (1) (a) The executive director, or the executive director's designee, shall establish a
132 review team of at least three ~~[qualified staff members]~~ licensed mental health professionals to
133 review the defendant's mental condition at least every ~~[six]~~ 12 months.

134 (b) When establishing a review team under this Subsection (1), the executive director
135 shall take into account best practices for assessing the defendant's risk of violence.

136 ~~[(b)]~~ (c) The review team described in ~~[Subsection (1)(a)]~~ this Subsection (1) shall
137 include:

138 (i) at least one forensic psychiatrist or forensic psychologist; and

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

141 (2) If the review team described in Subsection (1) finds that the defendant has
142 recovered from the defendant's mental illness, or, that the defendant ~~[still has a]~~ has not
143 recovered from the defendant's mental illness but does not present a substantial danger to self
144 or others, the executive director, or the executive director's designee, shall:

145 (a) notify the court that committed the defendant that the defendant is a candidate for
146 discharge; and

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

149 (3) (a) The court shall conduct a hearing within ~~[10 business]~~ 30 days after ~~[receipt of~~

150 ~~the executive director's, or the executive director's designee's, notification]~~ the day on which
151 the court receives the notification described in Subsection (2).

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

153 (i) the prosecuting attorney;

154 (ii) the defendant's attorney; and

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

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

159 (i) ~~[no longer has a]~~ has recovered from mental illness; or

160 (ii) has ~~[a]~~ not recovered from mental illness, but is no longer ~~[presents]~~ a substantial
161 danger to self or others.

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

164 (i) has a mental illness;

165 (ii) is a substantial danger to self or others; and

166 (iii) can be ~~[controlled]~~ adequately controlled if conditionally released with proper
167 care, medication, supervision, and treatment as a condition of release.

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

170 (i) has not recovered from the defendant's mental illness;

171 (ii) is a substantial danger to self or others; and

172 (iii) cannot be adequately ~~[be]~~ controlled if conditionally released ~~[on supervision]~~
173 with proper care, medication, supervision, and treatment as a condition of release.

174 (d) (i) ~~[Except as provided in Subsection (4)(d)(ii), the]~~ The court may not discharge a
175 defendant whose mental illness is in remission as a result of medication or hospitalization if it
176 can be determined within reasonable medical probability that, without continued medication or
177 hospitalization, the defendant's mental illness will reoccur, making the defendant a substantial
178 danger to self or others.

179 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection

180 (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

181 Section 4. Section **77-16a-305** is amended to read:

182 **77-16a-305. Conditional release.**

183 (1) If the review team described in Subsection 77-16a-304(1) finds that a defendant is
184 not eligible for discharge[;] in accordance with [~~Section~~] Subsection 77-16a-304(4)(a), but that
185 [~~his~~] the defendant's mental illness and dangerousness can be adequately controlled with proper
186 care, medication, supervision, and treatment, as described in Subsection 77-16a-304(4)(b), if
187 [~~he~~] the defendant is conditionally released, the review team shall prepare a report and notify
188 the executive director, or [~~his~~] the executive director's designee, that the defendant is a
189 candidate for conditional release.

190 (2) [~~The~~] Upon receipt of the report described in Subsection (1), the executive director,
191 or [~~his~~] the executive director's designee, shall prepare a conditional release plan[~~, listing~~] that:

192 (a) describes the type of care [~~and treatment that the individual needs and~~
193 recommending], supervision, medication, and treatment the defendant needs, taking into
194 account best practices for assessing the defendant's risk of violence; and

195 (b) recommends a treatment provider.

196 (3) The executive director, or [~~his~~] the executive director's designee, shall provide the
197 court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by
198 the review team under Subsection (1), and the conditional release plan described in Subsection
199 (2).

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

203 [~~(4)~~] (b) The court may order that [~~a~~] the defendant be conditionally released [~~if it~~] in
204 accordance with the defendant's conditional release plan if the court finds that, even though the
205 defendant presents a substantial danger to [~~himself~~] self or others, [~~he~~] the defendant can be
206 adequately controlled with proper care, supervision, medication, and treatment that is available
207 and provided for in the defendant's conditional release plan.

208 (5) (a) The department may provide [~~treatment~~] the care, supervision, medication, and
209 treatment described in Subsection (4)(b) in accordance with the defendant's conditional release
210 plan or contract with a local mental health authority or other public or private provider to
211 provide the care, supervision, medication, and treatment[~~for a defendant who is conditionally~~

212 released under this section].

213 (b) A local mental health authority, or other public or private provider that provides
214 care, supervision, medication, and treatment to a defendant who is conditionally released under
215 this section shall immediately notify the executive director, or the executive director's designee,
216 upon learning the defendant is not compliant with the defendant's conditional release plan.

217 (6) (a) If the department receives notice or otherwise finds that the defendant is not
218 compliant with the defendant's conditional release plan, the department may issue an order
219 temporarily revoking the defendant's conditional release and requiring the defendant to
220 immediately submit to the custody of the department.

221 (b) (i) Temporary revocation of a defendant's conditional release under Subsection
222 (6)(a) is effective for seven business days after the day on which the defendant is taken into the
223 custody of the department, unless otherwise ordered by the court.

224 (ii) A peace officer is authorized to take a defendant whose conditional release is
225 temporarily revoked under Subsection (6)(a) into physical custody and transport the defendant
226 to the custody of the department.

227 (c) Upon temporary revocation of a defendant's conditional release, the executive
228 director, or the executive director's designee, shall immediately provide the court, the
229 defendant's attorney, and the prosecuting attorney with written notice of the:

230 (i) temporary revocation; and

231 (ii) reason for the temporary revocation.

232 (7) Before the day on which the court conducts the hearing described in Subsection
233 (8)(a), the review team described in Section [77-16a-304](#) shall review the mental condition of
234 the defendant and provide a report to the court that describes whether the defendant remains a
235 candidate for conditional release under Subsection (1).

236 (8) (a) The court shall conduct an initial hearing within seven business days after the
237 day on which the defendant is taken into the custody of the department and reach an initial
238 determination regarding whether the defendant is a substantial danger to self or others, taking
239 into consideration:

240 (i) the report described in Subsection (7); and

241 (ii) arguments or evidence presented by the parties.

242 (b) If the court determines at the initial hearing described in Subsection (8)(a) that the

243 defendant is not a substantial danger to self or others, the defendant may be released on the
 244 defendant's current release plan.

245 (c) (i) If the court determines at the initial hearing described in Subsection (8)(a) that
 246 the defendant is a substantial danger to self or others, the court shall order:

247 (A) the defendant detained; and

248 (B) the executive director, or the executive director's designee, to establish a review
 249 team that meets the requirements described in Subsection 77-16a-304(1) to review the
 250 defendant's mental condition within 30 days after the day on which the court sends notice of the
 251 order.

252 (ii) Upon completion of the review described in Subsection (8)(c)(i)(B), the defendant
 253 shall be subject to the review and court proceedings described in Section 77-16a-304.

254 (d) The court shall order that the defendant be conditionally released in accordance
 255 with the defendant's conditional release plan if the court finds that, even though the defendant
 256 presents a substantial danger to self or others, the defendant can be adequately controlled with
 257 supervision and treatment that is available and provided for in the defendant's conditional
 258 release plan.

259 (9) The court clerk shall provide notice of the initial hearing described in Subsection
 260 (8)(a) in accordance with Subsection 77-16a-304(3).

261 Section 5. Section **77-16a-306** is amended to read:

262 **77-16a-306. Continuing review -- Discharge.**

263 ~~[(H) Each]~~ (1) (a) An entity that provides treatment for a defendant committed to the
 264 custody of the department as not guilty by reason of insanity under this part shall review the
 265 status of each defendant at least once every ~~[six]~~ 12 months.

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

271 (2) (a) Upon receipt of the notification ~~[under]~~ described in Subsection (1), the
 272 executive director shall designate a review team, in accordance with Section 77-16a-304, to
 273 evaluate the defendant.

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

277 (c) The court shall conduct a hearing, in accordance with Section [77-16a-302](#), within
278 ~~[10-business]~~ 30 days after ~~[receipt of that notice]~~ the day on which the court receives the
279 notice described in Subsection (2)(b).

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

285 (b) Notwithstanding Subsection (3)(a), the defendant described in Subsection (3)(a)
286 may be a candidate for conditional release in accordance with Section [77-16a-305](#).