MENTAL HEALTH ISSUES IN CRIMINAL LAW—A PRIMER

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THREE MAIN TYPES OF MENTAL HEALTH INQUIRIES:

1. Competency to stand trial, which is an inquiry focused on a "here and now" examination.
2. Mental defenses to the crime charged, which is an inquiry focused on a "there and then" (the time and place of the crime charged) examination.
3. Guilty and mentally ill (GAMI) evaluations, which may be one of two types. The first is a pretrial determination of whether the defendant was mentally ill at the time of the crime, so as to qualify for a verdict of *guilty and mentally ill at the time of the offense*. The second is the result of a plea or finding of *guilty and mentally ill at the time of the offense*, and involves an inquiry into a convicted defendant's current mental condition for purposes of sentencing. A finding of *guilty and mentally ill at the time of the offense* is first, and foremost, a verdict of guilty. It does not excuse or reduce the level of culpability, but triggers a mental evaluation before sentencing, and *may* result in different sentencing options if the statutory criteria are met.

MENTAL EXAMINATIONS OF DEFENDANTS

Mental examinations of a defendant may be triggered by the following:

1. Competency issues are raised.
2. Notice of intent to rely upon a mental defense is given by the defense.
3. Notice of intent to introduce evidence in mitigation of murder, aggravated murder, or attempts to commit those offenses (76-5-205.5, enacted 1999) is given by the defense.
4. Notice of intent to call a mental heath expert is given by the defense.
5. Defendant pleads or is found *guilty and mentally ill at the time of the offense* (or mental health issues otherwise become a factor in sentencing).

COMPETENCY TO STAND TRIAL

UCA 77-15-1, et seq. sets out the procedure for competency to stand trial.

Procedures

A. The petition alleging incompetency may be filed by either party, by any person having custody or supervision over the defendant, or by the court. UCA 77-15-3(2)(b) and 77-15-4.

B. When a petition is filed, the court shall stay all of the proceedings. UCA 77-15-5-(1).

The defendant is presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency.

UCA 77-15-2 provides the test, which is:

> **77-15-2 "Incompetent to proceed" defined.**
> For the purposes of this chapter, a person is incompetent to proceed if he is suffering from a mental disorder or mental retardation resulting either in:
> (1) his inability to have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or
> (2) his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding.

This standard is based on the "Dusky" test, which is the test set forth in the U.S. Supreme Court case of *Dusky v. United States*, 362 U.S. 402 (1960). The *Dusky* opinion is very brief. For an explanation of the facts of this case see the Eighth Circuit opinion at *Dusky v. United States*, 271 F.2d 385 (8th Cir. 1959). Failure of a court to articulate that it is applying the *Dusky* standard when finding a defendant competent to stand trial can be fatal to a conviction. See *Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1992).

When a defendant is adjudicated incompetent to proceed:

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A. The statute of limitations is tolled.
B. The time does not count against speedy trial.
C. Charges need not be dismissed. UCA 77-15-6(14). See also, *State v. Drobel*, 815 P.2d 724, fn 3 at 728.
D. The defendant may not be held forever. A defendant who is charged with a criminal offense and committed solely on account of incompetency cannot be held more than a reasonable period of time necessary to determine whether there is a substantial probability that he will attain competency in the foreseeable future. *Jackson v. Indiana*, 92 S. Ct. 1845 (1972). Utah's statute, UCA 77-15-6, provides for time limits for such commitments, tied to seriousness of charges (i.e., more serious charges, can hold longer). If defendant cannot be restored within reasonable period, defendant must be either released or civilly committed, but charges need not be dismissed, and competency may be assessed at a later time.

By statute, when a defendant is found incompetent, the Court must make specific findings and attorneys must provide information and materials relevant to the defendant's competency to the facility or person responsible for assessing and restoring competency (usually the State Hospital).

Treatment and restoration of competency provisions—see UCA 77-15-6

Juvenile competency—a hot topic

Studied in late 90's—bill drafted for session 2 years in a row, then pulled
Still being studied—legislation may be proposed
Very complex issues—no clear guideposts or criteria

MENTAL DEFENSES

UCA 76-2-305 Sets out the standard for mental illness as a defense:

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

(1) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. Mental illness is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.
(2) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."
(3) A person who is under the influence of voluntarily consumed, injected or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

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(4) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation. Mental illness does not mean a personality or character disorder or abnormality manifested primarily by repeated criminal conduct.

(5) "Mental retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined by the current Diagnostic and Statistical Manual of the American Psychiatric Association.

Practical application of statute:

In order to determine whether the defendant lacked the mental state required as an element of the offense, you must decide what mental state applies to the crime with which the defendant has been charged.

The mental state required as an element of criminal homicide is set forth in the criminal homicide statutes. For example, the murder statute provides in part:

76-5-203 Murder.

(1) Criminal homicide constitutes murder if the actor:

(a) *intentionally or knowingly* causes the death of another; . . .

Here's how the statute applies. Let's assume the defendant is being prosecuted for murder on the theory that the defendant INTENTIONALLY or KNOWINGLY caused the death of the victim.

A. If the defendant did intend to kill the victim the defendant is guilty.

B. If the defendant knowingly killed the victim the defendant is guilty.

C. If the defendant did not intend to kill the victim and did not know he was killing the victim, the defendant is not guilty of murder (but possibly guilty of a lesser included offense).

D. If the defendant:

1. did not intend to kill the victim, and
2. did not know he was killing the victim (or didn't know that the victim was a human being (i.e., robot, space alien, etc.)), and
3. the reason he didn't intend the killing and didn't know he was killing a human being was because he had a mental illness that prevented him from intending to kill and prevented him from knowing that he was killing, then the defendant is not guilty by reason of insanity.

It is NOT a defense that because of mental illness the defendant:

A. Did not appreciate the wrongfulness of his act [appreciation of wrongfulness is neither an element of the offense nor a defense to the crime].

B. Believed that God urged him to do it [the fact that he might have been urged to do it, or "egged on" isn't a defense].

C. Intended to kill someone else, not the person he really killed [76-5-204 "In any prosecution for criminal homicide, evidence that the actor caused the death of a person other than the intended victim shall not constitute a defense for any purpose to criminal homicide."]

D. Did not premeditate the murder [in Utah, premeditation is not an element of the offense].

E. Did not act with malice aforethought [not an element of the offense].

F. Did not deliberate about the murder [not an element of the offense].

G. Couldn't really stop himself [ability to control one's actions may be relevant to whether he INTENDED to do what he did, but irresistible impulse is not a defense in Utah].

H. Suffered from Posttraumatic Stress Disorder, with pronounced features of a Schizotypal Personality Disorder, etc., etc. [the labels don't control -- did the defendant intend to kill or know he was killing?].

I. Wouldn't have committed the crime *but for* the mental illness (not a "but for" test).

DIMINISHED MENTAL CAPACITY DEFENSE

UCA 76-2-305, which spells out mental illness defenses, provides in subsection (2):

The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."

Therefore, under the mental defense statute, there is a *unitary standard* for both insanity and diminished mental capacity (except for murder and attempted murder cases—see below). In either case the threshold issue is whether the defendant was

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suffering from a mental illness which impaired his ability to form from the necessary intent (i.e., acting intentionally or knowingly). If he did have a mental illness and it precluded him from forming the intent for the charged crime, he has a mental defense under the statute. Whether it then results in a verdict of *not guilty by reason of insanity* or *guilty of a lesser offense* (diminished mental capacity) (77-16a-102) depends on whether there exists a lesser included offense for which the defendant was able to form the necessary intent.

For a discussion of diminished mental capacity see *State v. Sessions,* 645 P.2d 643 (Utah 1982). The main idea is that "diminished mental capacity" means the defendant did not have the mental state for the crime charged, due to mental illness, but the defendant did have the mental state required for a lesser included offense.

In *Sessions*, a case which arose before Utah adopted its present *mens rea* standard for insanity, the defendant exposed himself to a woman in an elevator and forcibly touched her breasts and genital area. He was charged with forcible sexual abuse, which requires an intent to arouse or gratify sexual desire. Sessions was convicted as charged. His claim on appeal was that he had a mental disorder and that his intent was not to arouse or gratify his sexual desire; rather, he had the urge to expose himself because of anger towards his father.

The Supreme Court recognized the principle that the defendant potentially could have been convicted of the lesser offense of lewdness based upon a diminished mental capacity which impaired his ability to form the intent to commit the greater offense. (The offense of lewdness required only that the defendant expose himself under circumstances which he should have known would likely cause affront or alarm to the victim, but did not require as an element the intent to gratify sexual desire.)

DIMINISHED MENTAL CAPACITY IN HOMICIDE CASES

Diminished mental capacity has often been raised in homicide cases, where it has been, at best, elusive in its application. Historically, diminished mental capacity in homicide cases has focused on whether the presence of mental illness negates the defendant's acting with deliberation or premeditation, or with "malice aforethought" in the killing. While these concepts were part of the definition of homicide at common law, they are no longer elements of murder under the Utah Criminal Code.

A new variation of diminished mental capacity was introduced in 1999:

76-5-205.5 Special mitigation reducing the level of criminal homicide offense—Burden of proof—Application to reduce offense.

(1) Special mitigation exists when:
  (a) the actor causes the death of another under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305; and
  (b) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in his delusional state, those facts would provide a legal justification for his conduct.

(2) This section applies only if the defendant's actions, in light of his delusion, were reasonable from the objective viewpoint of a reasonable person.

(3) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under this section on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(4) (a) If the trier of fact finds the elements of an offense as listed in Subsection (4)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (4)(b).
  (b) If under Subsection (4)(a) the offense is:
    (i) aggravated murder, the defendant shall instead be found guilty of murder;
    (ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;
    (iii) murder, the defendant shall instead be found guilty of manslaughter; or
    (iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

(5) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.
  (b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (4).
  (c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution as established all the elements beyond a reasonable doubt.
  (d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a

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hung jury.

(6) (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.

(7) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

NOTE: In most other states, defendants who qualify under the above standard are simply found not guilty by reason of insanity under the theory that, due to mental illness, they lacked substantial capacity to appreciate the wrongfulness of their conduct.

MENTAL DEFENSES—PROCEDURES

UCA 77-16a-301, et seq. sets out the procedure for handling defendants who plead not guilty by reason of insanity, which includes a claim that the defendant has diminished mental capacity, and for those who propose to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under new statute, 76-5-205.5.

The notice requirements are set out in UCA 77-14-4:

77-14-4. **Insanity or diminished mental capacity—Notice requirement.**

(1) If a defendant proposes to offer evidence that he is not guilty as a result of insanity or that he had diminished mental capacity, or proposes to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5, he shall file and serve the prosecuting attorney with written notice of his intention to claim the defense at the time of arraignment or as soon afterward as practicable, but not fewer than 30 days before the trial.

(2) If the court receives notice that a defendant intends to claim that he is not guilty by reason of insanity or that he had diminished mental capacity, the court shall proceed in accordance with the requirements described in Section 77-16a-301.

When a plea of not guilty by reason of insanity is entered, or notice of intent to rely upon insanity or diminished mental capacity is given, the defendant must submit to examination. 77-16a-301(2).

A. By the examiners from the Department of Human Services (sometimes selected by the attorneys from the Human Services list of forensic examiners).

B. By independent examiners for the defense or prosecutor. [This means neither side is limited to the examiners assigned by the judge. However, if attorneys employ independent experts, their offices will be responsible for paying the examiners' fees, not the Department of Human Services.]

Notice must be given if either side intends to call a mental health expert.

If either side intends to call any expert to testify at trial or at any hearing regarding the mental state of the defendant or another, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or ten days before any hearing . . . Notice shall include the name and curriculum vitae, and a copy of the expert's report. UCA 77-14-3(1). This applies to rebuttal experts too. UCA 77-14-3(2).

The prosecutor's experts shall have access to examine the defendant. This is true even if the defendant has NOT raised a mental defense, so long as the defense intends to introduce ANY testimony of an expert which is based upon personal contact with or testing of the defendant.

77-14-3 Testimony regarding **mental state of defendant or another—Notice requirements—Right to examination.**

. . .

(3) If the prosecution or the defense proposes to introduce testimony of an expert which is based upon personal contact, interview, observation, or psychological testing of the defendant, testimony of an expert involving a mental diagnosis of the defendant, or testimony of an expert that the defendant does or does not fit a psychological or sociological profile, the opposing party shall have a corresponding right to have its own expert examine and evaluate the defendant.

(4) This section applies to any trial, sentencing hearing, and other hearing, excluding a preliminary hearing, whether or not the defendant proposes to offer evidence of the defense of insanity or diminished mental capacity.

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Procedure for those found not guilty by reason of insanity—See UCA 77-16a-302, et seq.

GUILTY AND MENTALLY ILL (GAMI)

If a person is found guilty of any offense and there is evidence that he was mentally ill at the time he committed the crime, he may be found *guilty and mentally ill at the time of the offense*. The original GAMI law enacted in 1983 was ambiguous as to the relevant time period for a finding of guilty and mentally ill, and there has been confusion as to its proper application. The 2002 Legislature clarified the law this year. The relevant time period is now clearly established as the time of the offense, and the plea and verdict are now called *guilty and mentally ill at the time of the offense* rather than just *guilty and mentally ill*. The standard of proof applicable to a finding of *guilty and mentally ill at the time of the offense* is a preponderance of the evidence. A defendant may also plead GAMI. In either case, whether through plea or verdict, *guilty and mentally ill at the time of the offense* is first and foremost a finding of guilty. It then triggers a mental evaluation prior to sentencing with the possibility of different sentencing options should a judge find the defendant to be a mentally ill offender. While different sentencing options are possible, they are not guaranteed.

Procedure for those found guilty and mentally ill at the time of the offense—See UCA 77-16a-101, et seq.

SUMMARY OF KEY POINTS

1. Only competent defendants can be tried. People who are mentally ill may or may not be competent to be tried. The question is whether, due to mental illness, a person suffers from specific psychological/legal deficiencies which prevent the person from possessing the ability to have a rational and factual understanding of the proceedings or to consult with counsel with a reasonable degree of rational understanding.

2. In Utah, due to the strict "mens rea" statute, most mentally ill people are held responsible for their criminal acts, even those who would be found not guilty by reason of insanity in most other states. The fact that a person may have been schizophrenic at the time he kills another is only the threshold question. If, due to schizophrenia, he thought he was killing a space alien rather than a human being, Utah law provides a defense. On the other hand, if he knew he was killing a human being but, due to schizophrenia, he did so because he felt the victim 1) was trying to control his mind, or 2) was really a Nazi war criminal, or 3) was an evil person whom God commanded him to kill, he has no defense under Utah law. (The fact that, "but for" the schizophrenia, he wouldn't have committed the crime, does not answer the relevant question re: intent.) He may, however, be found *guilty and mentally ill at the time of the offense*. The Utah Supreme Court has characterized the GAMI law as buffering some of the harsher consequences of eliminating an independent insanity defense. [*State v. Herrera*, 895 P.2d 359 (Utah 1995).]

3. The new special mitigation law now affords delusional mentally ill defendants a narrow opportunity to mitigate the degree of a homicide or attempted homicide offense—an opportunity previously unavailable under Utah's strict "mens rea" law. The new law only applies, however, if the defendant suffered from a major mental disorder at the time of the crime, and the nature of his delusion was such that, had the facts existed as he believed them to be in his delusional state, those facts would have provided a legal justification for his conduct (i.e., self-defense).

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Court May Not Mandate Sequence of Jury Deliberation. Defendant, a fifteen-year-old, was spending the night with his fourteen-year-old friend. Early the next morning, defendant awoke his friend's mother to report that her son had tried to stab him, and that he had stabbed back. Defendant's friend was found dead, and defendant was tried as an adult for murder. At trial, the jury was instructed that it could not convict defendant of manslaughter unless it first found that all of the elements of murder were not established. Appealing his subsequent murder conviction, defendant argued that the court erred in requiring that the jury decide the charged offense before considering the lesser included offense. The Utah Supreme Court agreed, stating that the lower court could make suggestions or recommendations with regard to when the jury considered lesser included offenses, but that it could not effectively require the jury to render an acquittal on the charged offense before considering the lesser included offense. Calling the instruction "particularly erroneous" where defendant's version of the facts suggested his potential eligibility for extreme emotional disturbance manslaughter even if the jury found all of the elements of murder established, the Court reversed the conviction and remanded for a new trial. *State v. Shumway*, 2002 UT 124.

"Same Position" Language Requires Suppression of Inculpatory Statements at Retrial. Defendant was convicted on eight counts of aggravated burglary to which he had pleaded not guilty. During a presentence

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