

# **STATE FORENSIC SERVICES**

## **Responsibility for Court-Ordered MI/ID Evaluations**

62A-1-108.5 (Superseded 05/01/13). Mental illness and intellectual disability examinations -- Responsibilities of the department.

(1) In accomplishing its duties to conduct mental illness and intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, and juvenile competency evaluations pursuant to Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

This responsibility has been delegated to the Division of Substance Abuse and Mental Health.

## **Assigning of Forensic Examiners**

The Department maintains a list of forensic examiners who have a current contract to provide evaluation services for court-ordered MI/ID examinations. Currently the following persons/agencies are authorized to assign cases to contracted forensic examiners:

Danette Faretta-Brady, Utah State Hospital  
Third District Court  
Weber Mental Health (until August 1, 2012)

Orders for court-ordered MI/ID evaluations should be sent to Danette Faretta-Brady, Utah State Hospital Legal Services, by e-mail ([dfaretta@utah.gov](mailto:dfaretta@utah.gov)) or fax: (801) 344-4313. Upon receipt, the attorney or attorneys responsible to provide collateral (discovery) information will be contacted. Once all needed information is obtained, examiners will be assigned.

## **Contacts**

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**Mental illness and intellectual disability examinations -- Responsibilities of the department.**

**62A-1-108.5 (Superseded 05/01/13). Mental illness and intellectual disability examinations -- Responsibilities of the department.**

(1) In accomplishing its duties to conduct mental illness and intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, and juvenile competency evaluations pursuant to Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

(2) When the department is ordered by the district court to conduct a mental illness or intellectual disability examination the executive director shall:

- (a) direct that the examination be performed at the Utah State Hospital; or
- (b) designate at least one examiner, selected under Subsection (4), to examine the defendant in the defendant's current custody or status.

(3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation pursuant to Title 78A, Chapter 6, Juvenile Court Act, the executive director shall:

- (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor; and
- (b) upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.

(4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct mental illness and intellectual disability or related condition, and juvenile competency evaluations under Subsections (2)(b) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6, Utah Procurement Code.

(5) Nothing in this section prohibits the executive director, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (4) to contract with the department to conduct the evaluation. In selecting that person, the criteria of the department established under Subsection (4) and the provisions of Title 63G, Chapter 6, Utah Procurement Code, shall be met.

**Mental illness -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed -- Definition.**

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

(1) (a) 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.

(b) 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 asserts a defense of insanity or diminished mental capacity, and 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.

(4) (a) "**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.

(b) "**Mental illness**" does not mean an 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 prior to age 22.

Inquiry into Sanity of  
Defendant  
Section 1

**Incompetent person not to be tried for public offense.**

**77-15-1. Incompetent person not to be tried for public offense.**

No person who is incompetent to proceed shall be tried for a public offense.

Amended by Chapter 256, 2000 General Session

Inquiry into Sanity of  
Defendant  
Section 2

**"Incompetent to proceed" defined.**

**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.

Amended by Chapter 162, 1994 General Session

quiry into  
Sanity of  
Defendant  
Section 3

**Petition for inquiry as to defendant or prisoner -- Filing -- Contents.**

**77-15-3. Petition for inquiry as to defendant or prisoner -- Filing -- Contents.**

(1) Whenever a person charged with a public offense or serving a sentence of imprisonment is or becomes incompetent to proceed, as defined in this chapter, a petition may be filed in the district court of the county where the charge is pending or where the person is confined.

(2) (a) The petition shall contain a certificate that it is filed in good faith and on reasonable grounds to believe the defendant is incompetent to proceed. The petition shall contain a recital of the facts, observations, and conversations with the defendant that have formed the basis for the petition. If filed by defense counsel, the petition shall contain such information without invading the lawyer-client privilege.

(b) The petition may be based upon knowledge or information and belief and may be filed by the party alleged incompetent to proceed, any person acting on his behalf, the prosecuting attorney, or any person having custody or supervision over the person.

Amended by Chapter 162, 1994 General Session

Inquiry into Sanity  
of Defendant

Section 4

**Court may raise issue of competency at any time.**

**77-15-4. Court may raise issue of competency at any time.**

The court in which a charge is pending may raise the issue of the defendant's competency at any time. If raised by the court, counsel for each party shall be permitted to address the issue of competency.

Amended by Chapter 162, 1994 General Session

**Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

**77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

(1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition.

(b) The district court in which the petition is filed:

(i) shall review the allegations of incompetency;

(ii) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition if the court finds the petition is not clearly sufficient on its face;

(iii) shall hold a hearing if the petition is opposed by either party;

(iv) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial; and

(v) shall order an examination of the defendant and a hearing on the defendant's mental condition if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

- (i) comprehend and appreciate the charges or allegations against the defendant;
- (ii) disclose to counsel pertinent facts, events, and states of mind;
- (iii) comprehend and appreciate the range and nature of possible penalties, if applicable,

that may be imposed in the proceedings against the defendant;

- (iv) engage in reasoned choice of legal strategies and options;
  - (v) understand the adversary nature of the proceedings against the defendant;
  - (vi) manifest appropriate courtroom behavior; and
  - (vii) testify relevantly, if applicable;
- (b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;
- (c) if psychoactive medication is currently being administered:
- (i) whether the medication is necessary to maintain the defendant's competency; and
  - (ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and
- (d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

- (a) which of the above factors contributes to the defendant's incompetency;
- (b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;
- (c) the treatment or treatments appropriate and available;
- (d) the defendant's capacity to give informed consent to treatment to restore competency; and
- (e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.

(6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by the experts shall:

- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- (c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) (a) Any statement made by the defendant in the course of any competency

examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon the statement, and any other fruits of the statement



may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9) (a) When the report is received the court shall set a date for a mental hearing. The hearing shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(b) Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. A conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) (a) A person shall be 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 at the hearing.

(b) An adjudication of incompetency to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(11) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the expert testimony, studies, and reports provided under this section.

(12) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b). The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing the defendant's progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(13) (a) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (12), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human

Services or a designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination.

(b) The executive director of the Department of Human Services or a designee may

refuse to accept a defendant as a patient unless the defendant is accompanied by a transportation and commitment order which is accompanied by the reports.

(14) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing the defendant's progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

(a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;

(b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and

(c) information concerning the defendant's known criminal history.

(15) The court may make any reasonable order to insure compliance with this section.

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Amended by Chapter 109, 2012 General Session  
Amended by Chapter 311, 2012 General Session

**Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.**

**77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.**

(1) Except as provided in Subsection (5), if after hearing, the defendant is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or a designee for the purpose of treatment intended to restore the defendant to competency. The court may recommend but not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or a designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

(2) The examiner or examiners designated by the executive director to assess the defendant's progress toward competency may not be involved in the routine treatment of the defendant. The examiner or examiners shall provide a full report to the court and prosecuting and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner shall have up to an additional 90 days to provide the full report. The full report shall assess:

(a) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms, and shall report:

(i) any diagnostic instruments, methods, and observations used by the examiner to make the determination; and

(ii) the examiner's opinion as to the effect of any false or exaggerated symptoms on the defendant's capacity to stand trial;

(b) the facility's or program's capacity to provide appropriate treatment for the defendant;

(c) the nature of treatments provided to the defendant;

(d) what progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(e) the defendant's current level of mental disorder or mental retardation and need for treatment, if any; and

(f) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party or by the executive director may appoint additional mental health examiners to examine the defendant and advise the court on the defendant's current mental status and progress toward competency restoration.

(4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to stand trial with a substantial probability that the defendant may

become competent in the foreseeable future; or

(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed

with the trial or other procedures as may be necessary to adjudicate the charges.

(b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or a designee for the purpose of treatment intended to restore the defendant to competency.

(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days prior to any release of the committed person.

(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the court shall hold a hearing one year following the recommitment.

(7) At the hearing held pursuant to Subsection (6), except for defendants charged with the crimes listed in Subsection (8), a defendant who has not been restored to competency shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may order the defendant recommitted for a period not to exceed 18 months for the purpose of treatment to restore the defendant to competency with a mandatory review hearing at the end of the 18-month period.

(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(10) If the defendant has been charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant recommitted for a period not to exceed 36 months for the purpose of treatment to restore competency.

(11) If the defendant is recommitted to the department pursuant to Subsection (10), the court shall hold a hearing no later than at 18-month intervals following the recommitment for the purpose of determining the defendant's competency status.

(12) A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(13) (a) In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if the defendant

were

convicted of the charged offense.

(b) This Subsection (13) does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

(14) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.

(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

(16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), (12), or (13) is not dismissal of the criminal charges.

(17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(18) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital or other facility or the executive director of the Department of Human Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

(19) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

**Petition for involuntary medication of incompetent defendant.**

**77-15-6.5. Petition for involuntary medication of incompetent defendant.**

(1) As used in this section:

(a) "Executive director" means the executive director of the Department of Human Services or the executive director's designee.

(b) "Final order" means a court order that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(2) (a) At any time after a defendant has been found incompetent to proceed and has been committed to the Department of Human Services under Section **77-15-6** for treatment to restore competency, the executive director shall notify the court, prosecuting attorney, and attorney for the defendant if the executive director has determined that the defendant is not responding to treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.

(b) The executive director shall provide the notification under Subsection (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than to restore the defendant's competency.

(3) In the notice under Subsection (2)(a), the executive director shall state whether the executive director believes:

(a) medication is necessary to render the defendant competent;

(b) medication is substantially likely to render the defendant competent;

(c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in his defense;

(d) no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and

(e) medication is medically appropriate and is in the defendant's best medical interest in light of his medical condition.

(4) (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct a hearing within 30 days, unless the court extends the time for good cause, to determine whether the court should convene a hearing regarding the involuntary medication of the defendant.

(b) The prosecuting attorney shall represent the state at any hearing under this section.

(c) The court shall consider whether the following factors apply in determining whether the defendant should be involuntarily medicated:

(i) important state interests are at stake in restoring the defendant's competency;

(ii) involuntary medication will significantly further the important state interests, in that the medication proposed:

(A) is substantially likely to render the defendant competent to stand trial; and

(B) is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist the defense counsel in conducting his defense;

(iii) involuntary medication is necessary to further important state interests, because any alternate less intrusive treatments are unlikely to achieve substantially the same results; and

(iv) the administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of his medical condition.

(5) In determining whether the proposed treatment is medically appropriate and is in the defendant's best medical interest, the potential penalty the defendant may be subject to, if the defendant is convicted of any charged offense, is not a relevant consideration.

(6) (a) If the court finds by clear and convincing evidence that the involuntary

administration of antipsychotic medication is appropriate, it shall make findings addressing each of the factors in Subsection (4)(c) and shall issue an order authorizing the Department of Human Services to involuntarily administer antipsychotic medication to the defendant in order to restore his competency, subject to the periodic reviews and other procedures provided in Section **77-15-6**.

(b) When issuing an order under Subsection (6)(a), the court shall consider ordering less intrusive means for administering the drugs, such as a court order to the defendant enforceable by the contempt power, before ordering more intrusive methods of involuntary medication.

(7) The provisions in Section **77-15-6** establishing time limitations for treatment of incompetent defendants before they must be either released or civilly committed are tolled from the time the executive director gives notice to the court and the parties under Subsection (2) until:

(a) the court has issued a final order for the involuntary medication of the defendant, and the defendant has been medicated under that order; or

(b) the court has issued a final order that the defendant will not be involuntarily medicated.

(8) This section applies only when the prosecution seeks an order of involuntary medication solely for the purpose of rendering a defendant competent to proceed.

Inquiry into  
Sanity of  
defendant

Section 7

**Statute of limitations and speedy trial -- Effect of incompetency of defendant.**

**77-15-7. Statute of limitations and speedy trial -- Effect of incompetency of defendant.**

(1) The statute of limitations is tolled during any period in which the defendant is adjudicated incompetent to proceed.

(2) Any period of time during which the defendant has been adjudicated incompetent and any period during which he is being evaluated for competency may not be computed in determining the defendant's speedy trial rights.

Repealed and Re-enacted by Chapter 162, 1994 General Session

Inquiry into Sanity of  
Defendant

Section 8

**Bail exonerated on commitment of defendant.**

**77-15-8. Bail exonerated on commitment of defendant.**

When a defendant awaiting trial is committed to a mental health facility, bail shall be exonerated.

Enacted by Chapter 15, 1980 General Session



**Expenses.**

**77-15-9. Expenses.**

(1) In determining the competence of a defendant to proceed, expenses of examination, observation, or treatment, excluding travel to and from any mental health facility, shall be charged to the Department of Human Services when the offense is a state offense. Travel expenses incurred by the defendant shall be charged to the county where prosecution is commenced. Examination of defendants on local ordinance violations shall be charged by the department to the municipality or county commencing the prosecution.

(2) When examination is initiated by the court or on motion of the prosecutor, expenses of commitment and treatment of the person confined to a mental health facility after examination, if he is determined to be incompetent to proceed, shall also be charged to the department.

(3) Expenses of examination, treatment, or confinement in a mental health facility for any person who has been convicted of a crime and placed in a state correctional facility shall be charged to the Department of Corrections.

(4) If the defendant, after examination, is found to be competent by the court, all subsequent costs are charged to the county commencing prosecution. If the defendant requested the examination and is found to be competent by the court, the department may recover the expenses of the examination from the defendant.

Exemptions From Death  
Penalty In Capital Cases

Section 101

**Mentally retarded defendant not subject to death penalty -- Defendant with subaverage functioning not subject to death penalty if confession not corroborated.**

**77-15a-101. Mentally retarded defendant not subject to death penalty -- Defendant with subaverage functioning not subject to death penalty if confession not corroborated.**

(1) A defendant who is found by the court to be mentally retarded as defined in Section **77-15a-102** is not subject to the death penalty.

(2) A defendant who does not meet the definition of mental retardation under Section **77-15a-102** is not subject to the death penalty if:

(a) the defendant has significantly subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning;

(b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and

(c) the state intends to introduce into evidence a confession by the defendant which is not supported by substantial evidence independent of the confession.

Enacted by Chapter 11, 2003 General Session

Exemptions From  
Death Penalty In  
Capital Cases  
Section 102

**"Mentally retarded" defined.**

**77-15a-102. "Mentally retarded" defined.**

As used in this chapter, a defendant is "mentally retarded" if:

(1) the defendant has significant subaverage general intellectual functioning that results in and exists concurrently with significant deficiencies in adaptive functioning that exist primarily in the areas of reasoning or impulse control, or in both of these areas; and

(2) the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning under Subsection (1) are both manifested prior to age 22.

Enacted by Chapter 11, 2003 General Session

Exemptions From  
Death Penalty In  
Capital Cases

Section 103

**Court may raise issue of mental retardation at any time.**

**77-15a-103. Court may raise issue of mental retardation at any time.**

The court in which a capital charge is pending may raise the issue of the defendant's mental retardation at any time. If raised by the court, counsel for each party shall be allowed to address the issue of mental retardation.

Enacted by Chapter 11, 2003 General Session

**Hearing -- Notice -- Stay of proceeding -- Examinations of defendant  
-- Scope of examination -- Report -- Procedures.**

**77-15a-104. Hearing -- Notice -- Stay of proceeding -- Examinations of  
defendant -- Scope of examination -- Report -- Procedures.**

(1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies for an exemption from the death penalty under Subsection **77-15a-101**(1) or (2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(b) If the defendant wishes to claim the exemption provided in Subsection **77-15a-101**(2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(2) When notice is given under Subsection (1), the court raises the issue, or a motion is filed regarding Section **77-15a-101**, the court may stay all proceedings in order to address the issue.

(3) (a) The court shall order the Department of Human Services to appoint at least two mental health experts to examine the defendant and report to the court. The experts:

- (i) may not be involved in the current treatment of the defendant; and
- (ii) shall have expertise in mental retardation assessment.

(b) Upon appointment of the experts, the defendant or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's mental retardation, including copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) The court may make the necessary orders to provide the information listed in Subsection (3)(b) to the examiners.

(d) The court may provide in its order appointing the examiners that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(e) Prior to examining the defendant, examiners shall specifically advise the defendant of the limits of confidentiality as provided under Section **77-15a-106**.

(4) During any examinations under Subsection (3), unless the court directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) The experts shall in the conduct of their examinations and in their reports to the court consider and address:

(a) whether the defendant is mentally retarded as defined in Section **77-15a-102**;

(b) the degree of any mental retardation the expert finds to exist;

(c) whether the defendant has the mental deficiencies specified in Subsection **77-15a-101**(2); and

(d) the degree of any mental deficiencies the expert finds to exist.

(6) (a) The experts examining the defendant shall provide written reports to the court, the prosecution, and the defense within 60 days of the receipt of the court's order, unless the expert submits to the court a written request for additional time in accordance with Subsection (6)(c).

(b) The reports shall provide to the court and to prosecution and defense counsel the examiners' written opinions concerning the mental retardation of the defendant.

(c) If an examiner requests of the court additional time, the examiner shall provide

the report to the court and counsel within 90 days from the receipt of the court's order unless, for

good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by an expert shall:

- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- (c) state the expert's clinical observations, findings, and opinions; and
- (d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) Within 30 days after receipt of the report from the Department of Human Services, but not later than five days before hearing, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.

(9) (a) Except pursuant to Section **77-15a-105**, this chapter does not prevent any party from producing any other testimony as to the mental condition of the defendant.

(b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (10).

(10) (a) Expenses of examinations of the defendant ordered by the court under this section shall be paid by the Department of Human Services.

(b) Travel expenses associated with any court-ordered examination that are incurred by the defendant shall be charged by the Department of Human Services to the county where prosecution is commenced.

(11) (a) When the report is received, the court shall set a date for a hearing to determine if the exemption under Section **77-15a-101** applies. The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.

(b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of Human Services to conduct the examination and any independent examiner.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine that examiner.

(12) (a) A defendant is presumed to be not mentally retarded unless the court, by a preponderance of the evidence, finds the defendant to be mentally retarded. The burden of proof is upon the proponent of mental retardation at the hearing.

(b) A finding of mental retardation does not operate as an adjudication of mental retardation for any purpose other than exempting the person from a sentence of death in the case before the court.

(13) (a) The defendant is presumed not to possess the mental deficiencies listed in Subsection **77-15a-101(2)** unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.

(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the state to establish that any

confession by the defendant which the state

intends to introduce into evidence is supported by substantial evidence independent of the confession.

(14) (a) If the court finds the defendant mentally retarded, it shall issue an order:

(i) containing findings of fact and conclusions of law, and addressing each of the factors in Subsections (5)(a) and (b); and

(ii) stating that the death penalty is not a sentencing option in the case before the court.

(b) If the court finds by a preponderance of the evidence that the defendant possesses the mental deficiencies listed in Subsection **77-15a-101(2)** and that the state fails to establish that any confession is supported by substantial evidence independent of the confession, the state may proceed with its case and:

(i) introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or

(ii) not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.

(c) (i) A finding by the court regarding whether the defendant qualifies for an exemption under Section **77-15a-101** is a final determination of that issue for purposes of this chapter.

(ii) The following questions may not be submitted to the jury by instruction, special verdict, argument, or other means:

(A) whether the defendant is mentally retarded for purposes of this chapter; and

(B) whether the defendant possesses the mental deficiencies specified in Subsection **77-15a-101(2)**.

(iii) This chapter does not prevent the defendant from submitting evidence of retardation or other mental deficiency to establish a mental condition as a mitigating circumstance under Section **76-3-207**.

(15) A ruling by the court that the defendant is exempt from the death penalty may be appealed by the state pursuant to Subsection **77-18a-1(2)(h)**.

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Exemptions From  
Death Penalty In  
Capital Cases

Section 105

**Defendant's wilful failure to cooperate -- Expert testimony regarding retardation is barred.**

**77-15a-105. Defendant's wilful failure to cooperate -- Expert testimony regarding retardation is barred.**

(1) If the defendant files notice, raises the issue, or intends to present evidence or make an argument that the defendant is exempt from the death penalty under this chapter, the defendant shall make himself available and fully cooperate in any examination by mental health experts appointed by the Department of Human Services and any other independent examiners for the defense or the prosecution.

(2) If the defendant wilfully fails to make himself available and fully cooperate in the examination, and that failure is established to the satisfaction of the court, the defendant is barred from presenting expert testimony relating to any exemption from the death penalty under this chapter.

Enacted by Chapter 11, 2003 General Session



Exemptions From  
Death Penalty In  
Capital Cases  
Section 106

**Limitations on admitting mental retardation examination evidence.**

**77-15a-106. Limitations on admitting mental retardation examination evidence.**

(1) The following may not be admitted into evidence against the defendant in any criminal proceeding, except as provided in Subsection (2):

(a) any statement made by the defendant in the course of any mental examination conducted under this chapter, whether the examination is with or without the consent of the defendant, and any testimony by the expert based upon the defendant's statement; and

(b) any other fruits of the defendant's statement under Subsection (1)(a).

(2) Evidence under Subsection (1) may be admitted on an issue regarding a mental condition on which the defendant has introduced evidence.

Enacted by Chapter 11, 2003 General Session

Commitment and  
Treatment of Persons  
with a Mental Illness  
Section 101

**Definitions.**

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

As used in this chapter:

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

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

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

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

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

(6) "Offender with a mental illness" means an individual who has been  
adjudicated guilty with a mental illness, including an individual who has an  
intellectual disability.

(7) "UDC" means the Department of Corrections.

Amended by Chapter 366, 2011 General Session

**Jury instructions.**

**77-16a-102. Jury instructions.**

(1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that it may find the defendant:

- (a) guilty;
- (b) guilty with a mental illness at the time of the offense;
- (c) guilty of a lesser offense;
- (d) guilty of a lesser offense with a mental illness at the time of the offense;
- (e) not guilty by reason of insanity; or
- (f) not guilty.

(2) (a) When a defendant asserts a mental defense pursuant to Section **76-2-305** or asserts special mitigation reducing the level of an offense pursuant to Subsection **76-5-205.5(1)(a)**, or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant had a mental illness at the time of the offense.

(b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty with a mental illness at the time of the offense."

(c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."

(d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.

(e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

(3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.

(4) (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection **76-5-205.5(1)(b)**, the jury shall, in addition to its general verdict, return a special verdict.

(b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

Commitment and  
Treatment of Persons  
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Section 103

**Plea of guilty with a mental illness at the time of the offense.**

**77-16a-103. Plea of guilty with a mental illness at the time of the offense.**

(1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.

(2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.

(3) (a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.

(b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.

(4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section **77-16a-104**.

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

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

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

**Verdict of guilty with a mental illness -- Hearing to determine present mental state.**

**77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine present mental state.**

(1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.

(2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.

(3) If the court finds by clear and convincing evidence that the defendant currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental illness and who is convicted of the same offense, and:

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

(i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and

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

(A) because of the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and

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

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

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

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

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

(6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection **77-16a-103(5)**.

Commitment and  
Treatment of Persons  
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Section 201

**Probation.**

**77-16a-201. Probation.**

(1) (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place an offender who has been convicted of the felony offenses listed in Section **76-3-406** on probation, regardless of whether the offender has, or had, a mental illness.

(2) The period of probation for a felony offense committed by a person who has been found guilty with a mental illness at the time of the offense may be for no less than five years. Probation for those offenders may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:

(a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

**Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.**

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

(1) In sentencing and committing an offender with a mental illness to the department under Subsection **77-16a-104(3)(a)**, the court shall:

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

(b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section **76-3-207**.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section **77-16a-203**. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section **77-16a-204** may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

**Review of offenders with a mental illness committed to  
department -- Recommendations for transfer to Department of  
Corrections.**

**77-16a-203. Review of offenders with a mental illness committed to  
department -- Recommendations for transfer to Department of  
Corrections.**

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental illness should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental illness; or

(ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.



**Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.**

**77-16a-203. Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.**

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental illness should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental illness; or

(ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.

Commitment and  
Treatment of Persons  
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Section 205

**Parole.**

**77-16a-205. Parole.**

(1) When an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.

(2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental illness, including:

- (a) all available clinical facts;
- (b) the diagnosis;
- (c) the course of treatment received at the mental health facility;
- (d) the prognosis for remission of symptoms;
- (e) potential for recidivism;
- (f) an estimation of the dangerousness of the offender with a mental illness either to self or others; and

(g) recommendations for future treatment.

(3) Based on the report described in Subsection (2), the board may place the offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.

(4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.

(5) The period of parole may be no less than five years, or until expiration of the defendant's sentence, whichever occurs first. The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

**Mental examination of defendant**

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

(1) (a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(1)(a), the court shall order the Department of Human Services to examine the defendant and investigate the defendant's mental condition.

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

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

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

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

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

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

(4) The reports of any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.

(5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).

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

(7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

Commitment and  
Treatment of Persons  
with a Mental Illness  
Section 302

**Persons found not guilty by reason of insanity -- Disposition.**

**77-16a-302. Persons found not guilty by reason of insanity --  
Disposition.**

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant has a mental illness; and

(b) because of that mental illness the defendant presents a substantial danger to self or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

Commitment and  
Treatment of Persons  
with a Mental Illness  
Section 303

**Court determinations.**

**77-16a-303. Court determinations.**

After entry of judgment of not guilty by reason of insanity, the court shall:

- (1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and
- (2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Enacted by Chapter 171, 1992 General Session

**Review after commitment.**

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

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

(b) The team described in Subsection (1)(a) shall include:

(i) at least one psychiatrist; and

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

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

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

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

(3) (a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.

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

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

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

(4) (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:

(i) no longer has a mental illness; or

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

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

(i) has a mental illness;

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

(iii) can be controlled adequately if conditionally released with treatment as a condition of release.

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

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

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

(iii) cannot adequately be controlled if conditionally released on supervision.

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

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section

**77-16a-305.**

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Amended by Chapter 366, 2011 General Session

**Conditional release.**

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

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.

(2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.

(3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.

(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.

(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.



**Continuing review -- Discharge.**

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

(1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental illness, or, if the defendant has a mental illness, no longer presents a substantial danger to self or others, it shall notify the executive director of its findings.

(2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section **77-16a-304**, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section **77-16a-302**, within 10 business days after receipt of that notice.

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

**Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.**

**77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.**

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

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(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section **77-38a-203** describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The presentence investigation report shall include:

(i) findings from any screening and any assessment of the offender conducted under Section **77-18-1.1**; and

(ii) recommendations for treatment of the offender.

(e) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support the defendant is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section **76-6-107.1**;

(viii) pay for the costs of investigation, probation, and treatment services;

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(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

- (A) a diagnosed learning disability; or
- (B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section **76-3-201.1**, with interest and any other costs assessed under Section **64-13-21** during:

(a) the parole period and any extension of that period in accordance with Subsection **77-27-6(4)**; and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section **76-3-201.1**, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section **77-18-6**, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an

order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

- (ii) The defendant shall show good cause for a continuance.
- (iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.
- (iv) The order shall also inform the defendant of a right to present evidence.
- (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.
- (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.
- (iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.
- (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.
- (e) (i) After the hearing the court shall make findings of fact.
- (ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.
- (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.
- (13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:
  - (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
  - (b) treatment space at the hospital is available for the defendant; and
  - (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).
- (14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections **63G-2-403** and **63G-2-404**, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:
  - (a) ordered by the court pursuant to Subsection **63G-2-202(7)**;
  - (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
  - (c) requested by the Board of Pardons and Parole;
  - (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or
  - (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.
- (15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections **76-3-406** and **76-5-406.5**.
- (b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).
- (16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.
- (b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

- (c) The electronic monitoring device shall be used under conditions which require:
  - (i) the defendant to wear an electronic monitoring device at all times; and
  - (ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.
- (d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:
  - (i) place the defendant on probation under the supervision of the Department of Corrections;
  - (ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and
  - (iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.
- (e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.
- (f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Amended by Chapter 366, 2011 General Session

**IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH**

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**STATE OF UTAH,**

**Plaintiff,**

**vs.**

**Defendant.**

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**ORDER RE: COMPETENCY  
EVALUATION OF DEFENDANT**

**Case No.**

**Judge:**

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The Court, having reviewed the petition of \_\_\_\_\_, filed in the above case, and having determined that the specific allegations contained in the petition raise a bona fide doubt as to the defendant's competency to stand trial:

THE PETITION IS HEREBY GRANTED AND IT IS HEREBY ORDERED pursuant to Utah Code Ann. § 77-15-5 as follows:

1. The Department of Human Services is hereby appointed to designate two (2) alienists to examine the defendant's competency to stand trial.

2. The standard for competency which the experts should address is that provided in Utah Code Ann. § 77-15-2:

A person is incompetent to stand trial if he/she is suffering from a mental disorder or mental retardation resulting either in:

(a) his/her inability to consult with counsel and to participate in the proceedings against him/her or of the punishment specified for the offense charged; or

(b) his/her inability to consult with counsel and to participate in the proceedings against him/her with a reasonable degree of rational understanding.

3. The examining experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors deemed relevant by the experts:

(a) the defendant's present capacity to:

- (i) comprehend and appreciate the charges or allegations against him;
- (ii) disclose to counsel pertinent facts, events, and states of mind;
- (iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against him;
- (iv) engage in reasoned choice of legal strategies and options;
- (v) understand the adversary nature of the proceedings against him;
- (vi) manifest appropriate courtroom behavior; and
- (vii) testify relevantly, if applicable.

(b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of defendant's relationship with counsel.

(c) if psychoactive medication is currently being administered:

- (i) whether such medication is necessary to maintain the defendant's competency; and
- (ii) the effect of such medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings.



4. The written reports submitted by the experts shall also:

- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- (c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (d) identify the sources of information used by the expert and present the bases for the expert's clinical findings and opinions.

5. If an expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

- (a) which of the factors listed in 2. above contributes to the defendant's incompetency;
- (b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;
- (c) the treatment or treatments appropriate and available; and
- (d) the defendant's capacity to give informed consent to treatment to restore competency.

6. Prior to examining the defendant, the examiners shall notify the defendant that no statement made by him in the course of any competency examination, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in

evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. Such testimony may be admitted, however, where relevant to a determination of the defendant's competency.

7. Counsel for the Plaintiff/Defense shall forthwith provide information and materials to the examiners relevant to the determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense(s), and known criminal history information. Covered entities are hereby ordered to provide copies of mental health evaluations and treatments, including psychiatric evaluations, psychological evaluations, discharge summaries, and social histories. Pursuant to HIPAA requirements, CFR 164.512(f)(ii)(A), covered entities may disclose protected health information in response to an order of a court provided only the protected health information authorized by the court order is disclosed.

8. The mental health experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of this order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to proceed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the examination and report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

9. A competency hearing is scheduled by the Court for \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_

, District Court Judge

Attorney Name (BAR #)  
Firm/Association  
Attorney for \_\_\_\_\_  
Address  
Address  
Telephone  
E-mail

**IN THE FOURTH JUDICIAL COURT OF UTAH COUNTY  
STATE OF UTAH**

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**STATE OF UTAH**

**Plaintiff,**

**vs.**

**PETER RABBIT**

**Defendant.**

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**FINDINGS OF FACT, AND  
CONCLUSIONS OF LAW  
RE: COMPETENCY OF DEFENDANT**

**Case No.**

**Judge:**

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On \_\_\_\_\_, 2012, the Court held a hearing pursuant to UCA § 77-15-5.

The Court having received the evaluations of the Defendant's competency, provided by  
\_\_\_\_\_ and \_\_\_\_\_, now enters the following

Findings of Fact and Conclusions of Law concerning the Defendant's competency to  
stand trial.

**FINDINGS OF FACT**

1. As to whether the Defendant suffer from a mental illness, the Court finds that the Defendant suffers from:
2. As to the Defendant's present capacity to comprehend and appreciate the charges or allegations against him/her, the Court finds that due to the severity of his/her mental illness and cognitive dysfunction, the Defendant does not understand or appreciate the charges against him/her.
3. As to the Defendant's present capacity to disclose to counsel pertinent facts, events, and states of mind, the Court finds that the Defendant is clinically

impaired in his ability to accurately and coherently disclose to counsel pertinent facts, events and states of mind.

4. As to the Defendant's present capacity to comprehend and appreciate the range and nature of possible penalties that may be imposed in the proceedings against him, the Court finds that due to the cognitive dysfunction associated with his mental illness, the Defendant is profoundly impaired in his ability to appreciate the range and nature of possible penalties that may be imposed against him.
5. As to the Defendant's present capacity to engage in reasoned choices of legal strategies and options, the Court finds that due to the severity of his mental illness, the Defendant is unable to make competent decisions, and has little understanding of future consequences based upon different choices.
6. As to the Defendant's present capacity to understand the adversary nature of the proceedings against him, the Court finds that the Defendant does not have a basic understanding of the roles of the judge, prosecutor, defense attorney, juror and witness.
7. As to the Defendant's present capacity to manifest appropriate courtroom behavior, the Court finds that the Defendant's dysfunction would have little impact on courtroom behavior, however the Defendant lacks the capacity to engage in a meaningful participation of the Court process.
8. As to the Defendant's present capacity to testify relevantly (if applicable), the Court finds that the Defendant is not able to relevantly respond due to his thoughts being blocked as a result of his schizophrenia.
9. As to the impact of any mental disorder on the nature and quality of Defendant's relationship with counsel, the Court finds that the Defendant lacks the ability to participate in a meaningful professional relationship with his lawyer.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Court concludes by a preponderance of the evidence that the Defendant is currently not competency to stand trial, and as a result:

1. Defendant suffers from Schizophrenia, Paranoid Type.

2. Defendant does not have the capacity to comprehend and appreciate the charges and allegations.
3. Defendant does not have the capacity to disclose pertinent facts, events and state of mind.
4. Defendant does not have the capacity to comprehend and appreciate the range and nature of possible penalties.
5. As to the Defendant's present capacity to engage in reasoned choices of legal strategies and options, the Court finds the Defendant is unable to make rational judgements in his own interest.
6. The Court finds the Defendant does not have the present capacity to understand the adversarial nature of the proceedings against him.
7. The Court finds that the Defendant does not have the capacity to manifest appropriate courtroom behavior.
8. The Defendant does not have the present capacity to testify relevantly.
9. The Court finds the Defendant lacks the ability to participate in a professional relationship with his attorney.

### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, the Court concludes by a preponderance of the evidence that the Defendant is currently incompetent to stand trial.

### **ORDER**

The Court orders that the Defendant, \_\_\_\_\_, be committed to the custody of the Executive Director or his designee of the Department of Human Services for purposes of treatment intended to restore the defendant to competency. The Court orders that the defendant be placed in a secure/non-secure setting.

The Executive Director shall designate an examiner or examiners to assess the Defendant's progress toward competency and shall provide a report, pursuant to UCA 77-15-6(2), to the court and prosecuting and defense attorneys within 90 days of arrival at the treating facility.

A review hearing has been set for \_\_\_\_\_, \_\_\_\_ at \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012

BY THE COURT:

\_\_\_\_\_  
District Court Judge

Attorney  
Address  
Address  
Phone  
E-mail

**IN THE FOURTH DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

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**STATE OF UTAH**

**Plaintiff**

**v.**

**DEFENDANT NAME**

**Defendant**

**ORDER FOR GUILTY  
AND MENTALLY ILL  
EVALUATION**

**Case No.**

**Judge**

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This matter came before the Court for an entry of Guilty and Mentally Ill plea on the \_\_\_\_ day \_\_\_\_\_, 2012, pursuant to UCA 77-16a-103 et seq, to the offense(s) of:

The Defendant was present and represented by counsel, \_\_\_\_\_.

The State was represented by \_\_\_\_\_.

The Court, having accepted the plea and being advised of the premises, does hereby make and enter the following:

**ORDER**

1. The Executive Director of the Department of Human Services shall examine the defendant to determine his mental condition pursuant to 77-16a-104 and make recommendation whether:



- (a) the Defendant suffers from a mental illness and if it is determined Defendant does suffer from a mental illness, whether because of his mental illness the Defendant poses an immediate physical danger to self or others, including jeopardizing his own or others safety, health or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and
- (b) the Department is able to provide the Defendant with treatment, care, custody, and security that is adequate to the defendant's conditions and needs.

2. The examiners appointed by the Department of Human Services shall submit a written report to the Court one week prior to the hearing set in this matter.

3. A hearing is set for \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**BY THE COURT:**

\_\_\_\_\_  
**Judge**  
**Fourth District Court Judge**

**IN THE FOURTH DISTRICT JUDICIAL COURT  
IN AND FOR UTAH COUNTY  
STATE OF UTAH**

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**STATE OF UTAH.**

**Plaintiff,**

**vs.**

**SCOOBY DOO,**

**Defendant.**

**: FACTUAL FINDINGS AND  
: SENTENCING ORDER PURSUANT  
: TO UCA § 77-16a-104**

**: Case No.**

**: Judge:**

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On \_\_\_\_\_, the defendant, Scooby Doo, appeared with Counsel, \_\_\_\_\_, and entered a plea of guilty and mentally ill pursuant to UCA 77-16a-103 et seq. (2002) to the offense(s) of:

The Court then ordered that the defendant be examined by the Department of Human Services to determine whether he is currently mentally ill and to make recommendations regarding treatment of the defendant pursuant to UCA 77-16a-103 and 104.

This Court, having considered the reports prepared by \_\_\_\_\_ and \_\_\_\_\_, hereby finds, by clear and convincing evidence the following:

1. The defendant has been evaluated pursuant to the requirements of UCA 77-16a-103 and 104.
2. The defendant currently has a mental illness as defined by UCA 76-2-305.
3. That because of his mental illness, the defendant lacks the ability to provide the basic necessities of life, such as food, clothing and shelter.
4. That the Department of Human Services is able to provide the defendant with treatment care, custody, and security that is adequate to the defendant's conditions and needs.

## ORDER

IT IS HEREBY ORDERED:

1. That defendant, Scooby Doo, is hereby sentenced to a prison term of:  
\_\_\_\_\_.
2. That defendant, Scooby Doo, be committed to the Utah State Hospital for care and treatment for no more than 18 months, or until his condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first.
3. Jurisdiction will remain with the \_\_\_\_\_ District Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
District Court Judge

**IN THE FOURTH JUDICIAL COURT, IN AND FOR  
UTAH COUNTY, STATE OF UTAH**

**STATE OF UTAH**

**Plaintiff,**

**vs.**

**SCOOBY DOO**

**Defendant.**

**ORDER FOR EVALUATION**

**PLEA: NOT GUILTY BY REASON  
OF INSANITY**

**CASE NO:**

**JUDGE:**

The Department of Human Services is ordered to examine the Defendant pursuant to UCA 77-16a-301. The examiner or examiners appointed by the Department shall complete the examination within 30 days after the court's order and shall prepare and provide to the Court, the prosecuting attorney and defense attorney a written report concerning the condition of the defendant.

The defendant shall remain in custody unless the Court or the executive director of the department directs otherwise.

A hearing date has been set for: \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ am/pm.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**BY THE COURT:**

\_\_\_\_\_

**IN THE FOURTH JUDICIAL COURT, IN AND FOR  
UTAH COUNTY, STATE OF UTAH**

**STATE OF UTAH**

**Plaintiff,**

**vs.**

**SCOOBY DOO**

**Defendant.**

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**ORDER**

**NOT GUILY BY REASON  
OF INSANITY**

**CASE NO:**

**JUDGE:**

This matter was heard on \_\_\_\_\_, 20\_\_\_\_, before the  
Honorable Judge \_\_\_\_\_, Fourth District Court. The State was  
represented by \_\_\_\_\_. The defendant was present and  
represented by \_\_\_\_\_.

The defendant, having entered a plea of Not Guilty by Reason of Insanity to the  
the charge(s) of:

was examined by \_\_\_\_\_ and \_\_\_\_\_.

Both examiner reports have been reviewed by the Court and counsel.

**FINDINGS**

Based upon the reports and evidence presented, the Court now finds, by  
clear and convincing evidence, that the Defendant:

1. has a mental illness; and
2. because of that mental illness the defendant presents a substantial danger to  
self or others.

## ORDER

Pursuant to UCA 77-16a-302, the Court now orders that the Defendant be committed to the Department of Human Services for treatment appropriate to his needs and condition. The defendant shall be committed for a period not to exceed:

The Court orders that six month reviews be conducted, in accordance with UCA 77-16a-304, and the reports be submitted to the Court, prosecuting attorney and defense attorney.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY THE COURT:

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District Court Judge