



1997 SENATE BILL 70

February 12, 1997 - Introduced by Senators WELCH, SCHULTZ, DRZEWIECKI, BUETTNER, ROSENZWEIG and ZIEN, cosponsored by Representatives WALKER, LADWIG, OWENS, PORTER, DUFF, M. LEHMAN, ZUKOWSKI, DOBYNS, GOETSCH, BRANDEMUEHL, HANDRICK, OTTE, MUSSER, POWERS, ZIEGELBAUER, KREIBICH, AINSWORTH, HARSDFORF, SERATTI, HAHN, LAZICH, GUNDERSON, FREESE, OLSEN, GROTHMAN and OTT. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT** *to renumber* 971.15 (1) and 971.15 (2); *to amend* 51.37 (8) (a), 302.06,
2 938.30 (5) (c) (intro.), 971.16 (3) (intro.), 973.08 (1), 973.09 (2) (a) 1. and 973.09
3 (2) (b) 1.; and *to create* 51.20 (19) (am), 51.37 (8m), 302.11 (6m), 971.06 (1) (am),
4 971.15 (1g) (b), 971.15 (2m), 971.163, 971.165 (2g), 971.165 (3) (am), 973.017,
5 973.09 (2) (c) and 973.09 (6) of the statutes; **relating to:** creating a plea and
6 verdict of guilty but mentally ill in certain criminal cases.

Analysis by the Legislative Reference Bureau

Under current law, a person is not responsible for criminal conduct if at the time of such conduct the person was suffering from a mental disease or defect that resulted in the person lacking substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. To raise this defense, a person who is charged with a crime pleads not guilty by reason of mental disease or defect. After a person pleads not guilty by reason of mental disease or defect, the court appoints at least one physician or psychologist to examine the person and to testify at trial concerning the person's ability to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law at the time that the person committed the criminal offense charged. The person may also be examined by a physician, psychologist or other expert of his or her choice.

At a trial for a person who has pleaded not guilty by reason of mental disease or defect, the judge or jury first determines whether the person is guilty of the offense

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charged. If the judge or jury finds the person guilty, the judge or jury then determines whether the person is not responsible for his or her criminal conduct due to mental disease or defect. If the judge or jury finds the person not responsible for his or her criminal conduct due to mental disease or defect, the person is not guilty by reason of mental disease or defect and is committed for treatment to the department of health and family services for a period of time not exceeding two-thirds of the maximum term of imprisonment that could be imposed for the crime charged. If the judge or jury finds the person responsible for his or her criminal conduct, the person is convicted of the offense and is sentenced for the offense by the judge.

Also, under current law, any person who has been convicted and sentenced to imprisonment may be involuntarily committed for treatment in a state treatment facility if he or she is mentally ill, drug dependent or developmentally disabled, is a proper subject for treatment and is in need of treatment. In addition, if the person is a jail inmate, he or she must be dangerous to himself, herself or others, and if the person is a prison inmate, the person must need treatment that cannot be provided at the prison. To involuntarily commit for treatment a person who has been convicted and sentenced to imprisonment, a petition must be filed alleging that the person meets the criteria for involuntary commitment and, after an examination of the person, a hearing must be held before a judge or jury to determine whether the person meets the criteria for involuntary commitment. If the person is committed for treatment, the initial commitment may not exceed 6 months and subsequent consecutive commitment orders may not exceed one year.

This bill provides for a plea and verdict of guilty but mentally ill for persons charged with a homicide offense. Under the bill, a person charged with a homicide offense who pleads not guilty by reason of mental disease or defect may be found guilty but mentally ill after a trial if, after determining that the person is guilty of the homicide offense charged, a judge or jury determines that the person suffered from a mental illness at the time of his or her criminal conduct but the mental illness did not result in the person lacking substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. In addition, under the bill, a person charged with a homicide offense who pleads not guilty by reason of mental disease or defect may change his or her plea to guilty but mentally ill after being examined by a physician or psychologist as provided under current law. The district attorney must consent to the person changing his or her plea and the judge must find, after reviewing the examinations of the person and holding a hearing, that the person suffered from a mental illness at the time of his or her criminal conduct.

Under the bill, a person charged with a homicide offense who is found guilty but mentally ill is convicted of the offense and is sentenced for the offense by the judge. If a judge sentences a person who has been found guilty but mentally ill to the custody of the department of corrections (DOC) by sentencing the person to prison or by placing the person on probation, the court must also order DOC to evaluate the person for treatment and provide or arrange for the provision of any necessary treatment, and the person may be required to receive treatment as a condition of probation or parole. Finally, a person found guilty but mentally ill and imprisoned

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may also be committed to a state facility for treatment in the same manner as provided under current law for a person who has been convicted and sentenced to imprisonment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 51.20 (19) (am) of the statutes is created to read:

2 51.20 **(19)** (am) If an individual was found guilty but mentally ill under s.
3 971.163 or 971.165 and was subsequently involuntarily committed under this
4 section, the department shall, upon the individual's discharge, prepare a report for
5 the department of corrections that contains all of the following:

6 1. The individual's diagnosis.

7 2. A description of the individual's behavior before and while he or she was in
8 the treatment facility.

9 3. The course of treatment of the individual while he or she was in the
10 treatment facility.

11 4. The prognosis for the remission of symptoms and the potential for recidivism
12 and for presenting a danger to himself or herself or others.

13 5. Recommendations for future treatment.

14 **SECTION 2.** 51.37 (8) (a) of the statutes is amended to read:

15 51.37 **(8)** (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
16 inmate who is found to be mentally ill or drug dependent except that the petition
17 shall be made to the court that made the finding or, if the prisoner or inmate is
18 detained by transfer, to the circuit court of the county in which he or she is detained.
19 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)

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1 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
2 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
3 the prison or county jail or house of correction unless it is past his or her release date
4 as determined under s. 302.11, in which case he or she shall be discharged, subject
5 to s. 973.017 (3) (b), if applicable.

6 **SECTION 3.** 51.37 (8m) of the statutes is created to read:

7 51.37 (8m) If an individual who was found guilty but mentally ill under s.
8 971.163 or 971.165 and was subsequently transferred to or detained in a state
9 treatment facility under sub. (5), the department shall, upon the individual's
10 discharge, prepare a report for the department of corrections that contains all of the
11 following:

12 (a) The individual's diagnosis.

13 (b) A description of the individual's behavior before and while he or she was in
14 the treatment facility.

15 (c) The course of treatment of the individual while he or she was in the
16 treatment facility.

17 (d) The prognosis for the remission of symptoms and the potential for
18 recidivism and for presenting a danger to himself or herself or others.

19 (e) Recommendations for future treatment.

20 **SECTION 4.** 302.06 of the statutes is amended to read:

21 **302.06 Delivery of persons to prisons.** The sheriff shall deliver to the
22 reception center designated by the department every person convicted in the county
23 and sentenced to the Wisconsin state prisons or to the intensive sanctions program
24 as soon as may be after sentence, together with a copy of the judgment of conviction
25 and, if applicable, a copy of any report specified in s. 973.017 (4). The warden or

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1 superintendent shall deliver to the sheriff a receipt acknowledging receipt of the
2 person, naming the person, which receipt the sheriff shall file in the office of the clerk
3 who issued the copy of the judgment of conviction. When transporting or delivering
4 the person to any of the Wisconsin state prisons the sheriff shall be accompanied by
5 an adult of the same sex as the person. If the sheriff and the person are of the same
6 sex, this requirement is satisfied and a 3rd person is not required.

7 **SECTION 5.** 302.11 (6m) of the statutes is created to read:

8 302.11 (6m) An inmate who was found guilty but mentally ill under s. 971.163
9 or 971.165 and who is released on parole under sub. (1) or (1g) (b) or s. 304.02 or
10 304.06 (1) shall be required as a condition of his or her parole to participate in
11 treatment recommended by the department or by the department of health and
12 family services. In determining whether treatment should be a condition of the
13 inmate's parole, the department shall consider any reports prepared by the
14 department of health and family services under s. 51.20 (19) (am) or 51.37 (8m).

15 **SECTION 6.** 938.30 (5) (c) (intro.) of the statutes is amended to read:

16 938.30 (5) (c) (intro.) If the court finds that the juvenile was not responsible by
17 reason of mental disease or defect, as described under s. 971.15 (1) ~~and (2)~~ (1g) (a)
18 and (1r), the court shall dismiss the petition with prejudice and shall also do one of
19 the following:

20 **SECTION 7.** 971.06 (1) (am) of the statutes is created to read:

21 971.06 (1) (am) Guilty but mentally ill, subject to s. 971.163.

22 **SECTION 8.** 971.15 (1) of the statutes is renumbered 971.15 (1r).

23 **SECTION 9.** 971.15 (1g) (b) of the statutes is created to read:

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1 971.15 (1g) (b) In ss. 971.15 to 971.165, “mental illness” or “mentally ill” means
2 a substantial disorder of thought, mood or behavior that afflicted a person at the time
3 that he or she engaged in criminal conduct and that impaired the person’s judgment.

4 **SECTION 10.** 971.15 (2) of the statutes is renumbered 971.15 (1g) (a).

5 **SECTION 11.** 971.15 (2m) of the statutes is created to read:

6 971.15 (2m) A person charged with a crime under s. 940.01, 940.02, 940.03,
7 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 may be found guilty but mentally
8 ill if, at the time the person engaged in criminal conduct, he or she was suffering from
9 a mental illness but did not lack substantial capacity either to appreciate the
10 wrongfulness of his or her conduct or conform his or her conduct to the requirements
11 of law as a result of mental disease or defect. A person who is found guilty but
12 mentally ill is not relieved of criminal responsibility.

13 **SECTION 12.** 971.16 (3) (intro.) of the statutes is amended to read:

14 971.16 (3) (intro.) Not less than 10 days before trial, or at any other time that
15 the court directs, any physician or psychologist appointed under sub. (2) shall file a
16 report of his or her examination of the defendant with the judge, who shall cause
17 copies to be transmitted to the district attorney and to counsel for the defendant. The
18 Except as provided in ss. 971.163 (2) (a) and (3) and 973.017 (4), the contents of the
19 report shall be confidential until the physician or psychologist has testified or at the
20 completion of the trial. The report shall contain an opinion regarding the ability of
21 the defendant to appreciate the wrongfulness of the defendant’s conduct or to
22 conform the defendant’s conduct with the requirements of law at the time of the
23 commission of the criminal offense charged and, if sufficient information is available
24 to the physician or psychologist to reach an opinion, his or her opinion on whether
25 the defendant needs medication or treatment and whether the defendant is not

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1 competent to refuse medication or treatment. The defendant is not competent to
2 refuse medication or treatment if, because of mental illness, developmental
3 disability, alcoholism or drug dependence, and after the advantages and
4 disadvantages of and alternatives to accepting the particular medication or
5 treatment have been explained to the defendant, one of the following is true:

6 **SECTION 13.** 971.163 of the statutes is created to read:

7 **971.163 Entry of plea of guilty but mentally ill. (1)** If a defendant charged
8 with a crime under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09
9 or 940.10 has entered a plea of not guilty by reason of mental disease or defect and
10 has been examined under s. 971.16, the defendant may waive his or her right to a
11 trial under s. 971.165 and, with the approval of the district attorney, withdraw the
12 plea of not guilty by reason of mental disease or defect and enter a plea of guilty but
13 mentally ill in lieu of a plea of guilty or no contest.

14 **(2)** The court may accept a plea of guilty but mentally ill under sub. (1) only
15 if all of the following apply:

16 (a) The court, with the defendant's consent, has reviewed the reports of all the
17 examinations conducted under s. 971.16.

18 (b) The court holds a hearing on the issue of the defendant's mental illness and
19 allows the parties to present evidence at the hearing.

20 (c) Based on the review of reports under par. (a) and any evidence or arguments
21 presented at the hearing held under par. (b), the court is satisfied that the defendant
22 was mentally ill at the time that he or she committed the criminal offense charged.

23 (d) The defendant states that he or she is willing to participate in appropriate
24 mental health treatment that is recommended by a physician, psychologist or mental
25 health worker who is responsible for his or her mental health care and treatment.

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1 **(3)** If the court reviews a report under sub. (2) (a), the court shall make the
2 report a part of the record of the case.

3 **SECTION 14.** 971.165 (2g) of the statutes is created to read:

4 971.165 **(2g)** If a defendant charged with a crime under s. 940.01, 940.02,
5 940.03, 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 has entered a plea of not
6 guilty by reason of mental disease or defect and the defendant's plea is tried to a jury,
7 the court shall, in addition to providing to the jury the information required under
8 sub. (2), inform the jury of all of the following:

9 (a) That the jury may find the defendant guilty but mentally ill if the jury finds
10 all of the following:

11 1. That, beyond a reasonable doubt, the defendant did not lack substantial
12 capacity either to appreciate the wrongfulness of his or her conduct or conform his
13 or her conduct to the requirements of law as a result of mental disease or defect.

14 2. That, to a reasonable certainty by the greater weight of the credible evidence,
15 the defendant was mentally ill at the time that he or she committed the offense.

16 (b) That the effect of a verdict of guilty but mentally ill is that the defendant
17 will receive a criminal sentence or probation and may be required to receive
18 treatment for his or her mental illness.

19 **SECTION 15.** 971.165 (3) (am) of the statutes is created to read:

20 971.165 **(3)** (am) If a defendant charged with a crime under s. 940.01, 940.02,
21 940.03, 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 is found guilty but mentally
22 ill, the court shall enter a judgment of conviction and shall either impose or withhold
23 sentence under s. 973.017.

24 **SECTION 16.** 973.017 of the statutes is created to read:

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1 **973.017 Sentence of person found guilty but mentally ill.** (1) If a
2 defendant is found guilty but mentally ill under s. 971.163 or 971.165, the court, by
3 order, may impose sentence under this chapter, withhold sentence, or impose
4 sentence under s. 973.15 and stay its execution. Except as provided in s. 973.09 (1)
5 (c) or if probation is prohibited for a particular offense by statute, if the court
6 withholds sentence or imposes sentence and stays its execution for an offense, the
7 court may place the person on probation under s. 973.09.

8 (2) If the court places a defendant who is found guilty but mentally ill in the
9 custody of the department of corrections, the court shall order all of the following:

10 (a) That the department of corrections, or a person designated by the
11 department of corrections, evaluate the defendant to determine the defendant's
12 treatment needs.

13 (b) That the department of corrections provide or arrange for the provision of
14 necessary and appropriate treatment for the defendant's mental illness.

15 (3) (a) If a defendant who is found guilty but mentally ill is serving a sentence
16 of imprisonment or is confined as a condition of probation, he or she may be
17 transferred or committed for treatment to the department of health and family
18 services under s. 51.20 (1) (a) or (ar) or 51.37 (5). Any time spent by the defendant
19 in a state treatment facility due to a transfer or commitment under s. 51.20 (1) (a)
20 or (ar) or 51.37 (5) shall be included as part of the individual's sentence.

21 (b) A defendant who is transferred or committed to a state treatment facility
22 under par. (a) during the period of his or her imprisonment or confinement and who
23 is discharged from the inpatient treatment facility after his or her release date as
24 determined under s. 302.11 is subject to s. 302.11 (6m).

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1 (4) If a defendant who is found guilty but mentally ill is sentenced to prison or
2 to the intensive sanctions program, the clerk of court shall attach all of the following
3 to the judgment of conviction that is delivered with the defendant under s. 302.06 to
4 the reception center designated by the department:

5 (a) A copy of any report of an examination conducted under s. 971.16.

6 (b) A copy of any report other than a report specified in par. (a) that was
7 admitted into evidence at a hearing under s. 971.163 (2) (b).

8 (c) A copy of any report other than a report specified in par. (a) that was
9 admitted into evidence at a trial under s. 971.165.

10 **SECTION 17.** 973.08 (1) of the statutes is amended to read:

11 973.08 (1) When any defendant is sentenced to the state prisons, a copy of the
12 judgment of conviction ~~and~~, a copy of any order for restitution under s. 973.20 and,
13 if applicable, a copy of any report specified in s. 973.017 (4) shall be delivered by the
14 officer executing the judgment to the warden or superintendent of the institution
15 when the prisoner is delivered.

16 **SECTION 18.** 973.09 (2) (a) 1. of the statutes is amended to read:

17 973.09 (2) (a) 1. Except as provided in subd. 2. and par. (c), for misdemeanors,
18 not less than 6 months nor more than 2 years.

19 **SECTION 19.** 973.09 (2) (b) 1. of the statutes is amended to read:

20 973.09 (2) (b) 1. Except as provided in subd. 2. and par. (c), for felonies, not less
21 than one year nor more than either the statutory maximum term of imprisonment
22 for the crime or 3 years, whichever is greater.

23 **SECTION 20.** 973.09 (2) (c) of the statutes is created to read:

24 973.09 (2) (c) If the probationer was found guilty but mentally ill under s.
25 971.163 or 971.165, not less than 5 years.

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1 **SECTION 21.** 973.09 (6) of the statutes is created to read:

2 973.09 (6) If a defendant who is found guilty but mentally ill under s. 971.163
3 or 971.165 is placed on probation, all of the following apply:

4 (a) The court shall do all of the following:

5 1. Order the department of corrections, or a person designated by the
6 department of corrections, to evaluate the defendant to determine the defendant's
7 treatment needs.

8 2. Order that the department of corrections provide or arrange for the provision
9 of necessary and appropriate treatment that is recommended as a result of the
10 evaluation under subd. 1.

11 3. Order as a condition of probation that the defendant undergo the evaluation
12 required under subd. 1. and that he or she receive the necessary and appropriate
13 mental health treatment that is recommended as a result of that evaluation.

14 (b) Treatment required under par. (a) as a condition of probation may be
15 provided by any state or local agency or, if approved by the department, by a private
16 physician, psychologist, mental health worker or mental health agency.

17 (c) If the defendant is required to receive treatment under par. (a), the person
18 treating the defendant shall, once every 90 days, file with the court and the
19 department a written report concerning the defendant's condition and treatment.

20 (d) The defendant may be committed for treatment to the department of health
21 and family services under s. 51.20 (1) (a).

22 **SECTION 22. Initial applicability.**

23 (1) This act first applies to offenses committed on the effective date of this
24 subsection.

25

(END)