

## 1999 ASSEMBLY BILL 516

October 5, 1999 – Introduced by Representatives SUDER, OWENS, WALKER, AINSWORTH, BRANDEMUEHL, FREESE, GUNDRUM, HAHN, HANDRICK, HUEBSCH, KELSO, KREIBICH, LADWIG, MUSSER, OLSEN, PETROWSKI, PETTIS and SYKORA, cosponsored by Senators WELCH, FITZGERALD, HUELSMAN and ROESSLER. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT** *to renumber* 971.15 (1) and 971.15 (2); *to amend* 302.06, 938.30 (5) (c)  
2             (intro.), 971.16 (3) (intro.), 973.08 (1), 973.09 (2) (a) 1. and 973.09 (2) (b) 1.; and  
3             **to create** 51.20 (19) (am), 51.37 (8m), 302.11 (6m), 302.113 (7m), 302.114 (5)  
4             (dm), 971.06 (1) (am), 971.15 (1g) (b), 971.15 (2m), 971.163, 971.165 (2g),  
5             971.165 (3) (am), 973.017, 973.09 (2) (c) and 973.09 (6) of the statutes; **relating**  
6             **to:** creating a plea and verdict of guilty but mentally ill in certain criminal cases

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### *Analysis by the Legislative Reference Bureau*

#### ***Current law***

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.

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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 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 in a prison or jail 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 that is not available at the prison or jail. Alternatively, the person may be involuntarily committed if he or she is mentally ill, drug dependent or developmentally disabled, is a proper subject for treatment and, based on certain specified standards, is dangerous because he or she may harm himself, herself or others. 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.

***What this bill does***

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.

The bill also provides that 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

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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. The person may be required to receive treatment as a condition of probation, parole or extended supervision. Finally, a person found guilty but mentally ill and imprisoned 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.

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*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 of health and family services or the county department  
5           under s. 51.42 or 51.437, whichever is applicable, shall, upon the individual's  
6           discharge, prepare a report for the department of corrections that contains all of the  
7           following:

8           1. The individual's diagnosis.

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

11          3. The course of treatment of the individual while he or she was in the  
12          treatment facility.

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

15          5. Recommendations for future treatment.

16          **SECTION 2.** 51.37 (8m) of the statutes is created to read:

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1           51.37 **(8m)** If an individual was found guilty but mentally ill under s. 971.163  
2 or 971.165 and was subsequently transferred to or detained in a state treatment  
3 facility under sub. (5), the department of health and family services shall, upon the  
4 individual's discharge, prepare a report for the department of corrections that  
5 contains all of the following:

6           (a) The individual's diagnosis.

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

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

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

13           (e) Recommendations for future treatment.

14           **SECTION 3.** 302.06 of the statutes is amended to read:

15           **302.06 Delivery of persons to prisons.** The sheriff shall deliver to the  
16 reception center designated by the department every person convicted in the county  
17 and sentenced to the Wisconsin state prisons or to the intensive sanctions program  
18 as soon as may be after sentence, together with a copy of the judgment of conviction  
19 and, if applicable, a copy of any report specified in s. 973.017 (4). The warden or  
20 superintendent shall deliver to the sheriff a receipt acknowledging receipt of the  
21 person, naming the person, which receipt the sheriff shall file in the office of the clerk  
22 who issued the copy of the judgment of conviction. When transporting or delivering  
23 the person to any of the Wisconsin state prisons the sheriff shall be accompanied by  
24 an adult of the same sex as the person. If the sheriff and the person are of the same  
25 sex, this requirement is satisfied and a 3rd person is not required.

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1           **SECTION 4.** 302.11 (6m) of the statutes is created to read:

2           302.11 **(6m)** An inmate who was found guilty but mentally ill under s. 971.163  
3 or 971.165 and who is released on parole under sub. (1) or (1g) (b) or s. 304.02 or  
4 304.06 (1) shall be required as a condition of his or her parole to participate in any  
5 necessary and appropriate treatment that is recommended by the department of  
6 corrections or by the department of health and family services. In determining what  
7 treatment, if any, to recommend as a condition of the inmate's parole, the department  
8 of corrections shall consider any reports prepared by the department of health and  
9 family services under s. 51.20 (19) (am) or 51.37 (8m).

10           **SECTION 5.** 302.113 (7m) of the statutes is created to read:

11           302.113 **(7m)** An inmate who was found guilty but mentally ill under s. 971.163  
12 or 971.165 and who is released on extended supervision under this section shall be  
13 required as a condition of his or her extended supervision to participate in any  
14 necessary and appropriate treatment that is recommended by the department of  
15 corrections or by the department of health and family services. In determining what  
16 treatment, if any, to recommend as a condition of the inmate's extended supervision,  
17 the department of corrections shall consider any reports prepared by the department  
18 of health and family services under s. 51.20 (19) (am) or 51.37 (8m).

19           **SECTION 6.** 302.114 (5) (dm) of the statutes is created to read:

20           302.114 **(5)** (dm) If the court grants the petition for release to extended  
21 supervision of an inmate who was found guilty but mentally ill under s. 971.163 or  
22 971.165, the court shall require the inmate as a condition of his or her extended  
23 supervision to participate in any necessary and appropriate treatment that is  
24 recommended by the department of corrections or by the department of health and  
25 family services. In determining what treatment, if any, to recommend as a condition

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1 of the inmate's extended supervision, the department of corrections shall consider  
2 any reports prepared by the department of health and family services under s. 51.20  
3 (19) (am) or 51.37 (8m).

4 **SECTION 7.** 938.30 (5) (c) (intro.) of the statutes is amended to read:

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

9 **SECTION 8.** 971.06 (1) (am) of the statutes is created to read:

10 971.06 (1) (am) Guilty but mentally ill, subject to s. 971.163.

11 **SECTION 9.** 971.15 (1) of the statutes is renumbered 971.15 (1r).

12 **SECTION 10.** 971.15 (1g) (b) of the statutes is created to read:

13 971.15 (1g) (b) In this section and ss. 971.16 to 971.165, "mental illness" or  
14 "mentally ill" means a substantial disorder of thought, mood or behavior that  
15 afflicted a person at the time that he or she engaged in criminal conduct and that  
16 impaired the person's judgment.

17 **SECTION 11.** 971.15 (2) of the statutes is renumbered 971.15 (1g) (a).

18 **SECTION 12.** 971.15 (2m) of the statutes is created to read:

19 971.15 (2m) A person charged with a crime under s. 940.01, 940.02, 940.03,  
20 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 may be found guilty but mentally  
21 ill if, at the time the person engaged in criminal conduct, he or she was suffering from  
22 a mental illness but did not lack substantial capacity either to appreciate the  
23 wrongfulness of his or her conduct or to conform his or her conduct to the  
24 requirements of law as a result of mental disease or defect. A person who is found  
25 guilty but mentally ill is not relieved of criminal responsibility.

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

2           971.16 **(3)** (intro.) Not less than 10 days before trial, or at any other time that  
3 the court directs, any physician or psychologist appointed under sub. (2) shall file a  
4 report of his or her examination of the defendant with the judge, who shall cause  
5 copies to be transmitted to the district attorney and to counsel for the defendant. The  
6 Except as provided in ss. 971.163 (2) (a) and (3) and 973.017 (4), the contents of the  
7 report shall be confidential until the physician or psychologist has testified or at the  
8 completion of the trial. The report shall contain an opinion regarding the ability of  
9 the defendant to appreciate the wrongfulness of the defendant's conduct or to  
10 conform the defendant's conduct with the requirements of law at the time of the  
11 commission of the criminal offense charged and, if sufficient information is available  
12 to the physician or psychologist to reach an opinion, his or her opinion on whether  
13 the defendant needs medication or treatment and whether the defendant is not  
14 competent to refuse medication or treatment. The defendant is not competent to  
15 refuse medication or treatment if, because of mental illness, developmental  
16 disability, alcoholism or drug dependence, and after the advantages and  
17 disadvantages of and alternatives to accepting the particular medication or  
18 treatment have been explained to the defendant, one of the following is true:

19           **SECTION 14.** 971.163 of the statutes is created to read:

20           **971.163 Entry of plea of guilty but mentally ill. (1)** If a defendant charged  
21 with a crime under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09  
22 or 940.10 has entered a plea of not guilty by reason of mental disease or defect and  
23 has been examined under s. 971.16, the defendant may waive his or her right to a  
24 trial under s. 971.165 and, with the approval of the district attorney, withdraw the

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1 plea of not guilty by reason of mental disease or defect and, instead of a plea of guilty  
2 or no contest, enter a plea of guilty but mentally ill.

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

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

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

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

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

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

17 **SECTION 15.** 971.165 (2g) of the statutes is created to read:

18 971.165 (2g) If a defendant charged with a crime under s. 940.01, 940.02,  
19 940.03, 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 has entered a plea of not  
20 guilty by reason of mental disease or defect and the defendant's plea is tried to a jury,  
21 the court shall, in addition to providing to the jury the information required under  
22 sub. (2), inform the jury of all of the following:

23 (a) That the jury may find the defendant guilty but mentally ill if all of the  
24 following apply:



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1           1. The jury finds beyond a reasonable doubt that the defendant did not lack  
2           substantial capacity either to appreciate the wrongfulness of his or her conduct or  
3           to conform his or her conduct to the requirements of law as a result of mental disease  
4           or defect.

5           2. The jury finds to a reasonable certainty by the greater weight of the credible  
6           evidence that the defendant was mentally ill at the time that he or she committed  
7           the offense.

8           (b) That, if the jury finds the defendant guilty but mentally ill, is the defendant  
9           will receive a criminal sentence or probation and may be required to receive  
10          treatment for his or her mental illness.

11          **SECTION 16.** 971.165 (3) (am) of the statutes is created to read:

12          971.165 (3) (am) If a defendant charged with a crime under s. 940.01, 940.02,  
13          940.03, 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10 is found guilty but mentally  
14          ill, the court shall enter a judgment of conviction and shall either impose or withhold  
15          sentence under s. 973.017.

16          **SECTION 17.** 973.017 of the statutes is created to read:

17          **973.017 Sentence of person found guilty but mentally ill. (1)** If a  
18          defendant is found guilty but mentally ill under s. 971.163 or 971.165, the court, by  
19          order, may impose sentence under this chapter, withhold sentence, or impose  
20          sentence under s. 973.15 and stay its execution. Except as provided in s. 973.09 (1)  
21          (c) or if probation is prohibited for a particular offense by statute, the court may place  
22          the person on probation under s. 973.09 if the court withholds sentence or imposes  
23          sentence and stays its execution for an offense.

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1           **(2)** If the court places a defendant who is found guilty but mentally ill on  
2 probation or sentences a defendant who is found guilty but mentally ill to the  
3 Wisconsin state prisons, the court shall do all of the following:

4           (a) Order the department, or a person designated by the department, to  
5 evaluate the defendant to determine the defendant's treatment needs.

6           (b) Order the department to provide or arrange for the provision of necessary  
7 and appropriate treatment for the defendant's mental illness.

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

14           **(4)** If a defendant who is found guilty but mentally ill is sentenced to the  
15 Wisconsin state prisons or to the intensive sanctions program, the clerk of court shall  
16 attach all of the following to the judgment of conviction that is delivered with the  
17 defendant under s. 302.06 to the reception center designated by the department:

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

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

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

23           **SECTION 18.** 973.08 (1) of the statutes is amended to read:

24           973.08 **(1)** When any defendant is sentenced to the state prisons, a copy of the  
25 judgment of conviction ~~and~~, a copy of any order for restitution under s. 973.20 and,

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1 if applicable, a copy of any report specified in s. 973.017 (4) shall be delivered by the  
2 officer executing the judgment to the warden or superintendent of the institution  
3 when the prisoner is delivered.

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

5 973.09 (2) (a) 1. Except as provided in subd. 2. and par. (c), for misdemeanors,  
6 not less than 6 months nor more than 2 years.

7 **SECTION 20.** 973.09 (2) (b) 1. of the statutes is amended to read:

8 973.09 (2) (b) 1. Except as provided in subd. 2. and par. (c), for felonies, not less  
9 than one year nor more than either the statutory maximum term of imprisonment  
10 for the crime or 3 years, whichever is greater.

11 **SECTION 21.** 973.09 (2) (c) of the statutes is created to read:

12 973.09 (2) (c) If the probationer was found guilty but mentally ill under s.  
13 971.163 or 971.165, not less than 5 years.

14 **SECTION 22.** 973.09 (6) of the statutes is created to read:

15 973.09 (6) (a) If a defendant who is found guilty but mentally ill under s.  
16 971.163 or 971.165 is placed on probation, the court shall do all of the following:

17 1. Order the department, or a person designated by the department, to evaluate  
18 the defendant to determine the defendant's treatment needs.

19 2. Order that the department provide or arrange for the provision of necessary  
20 and appropriate treatment that is recommended as a result of the evaluation under  
21 subd. 1.

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

