



1995 ASSEMBLY BILL 295

April 4, 1995 - Introduced by Representatives WALKER, OWENS, GROTHMAN, DOBYNS, SCHNEIDERS, FOTI, MUSSER, HAHN, KREIBICH, HOVEN, AINSWORTH, NASS, DUFF, URBAN, OURADA, HANDRICK and SERATTI, cosponsored by Senators ROSENZWEIG, PETAK and DARLING. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 971.15 (1) and 971.15 (2); **to renumber and amend**
2 971.165 (2); **to amend** 48.30 (5) (c) (intro.), 51.37 (8) (a), 971.16 (3), 973.09 (2)
3 (a) 1. and 973.09 (2) (b) 1.; and **to create** 51.20 (19) (am), 51.37 (8m), 302.11
4 (6m), 971.06 (1) (am), 971.15 (1g) (b), 971.15 (2m), 971.163, 971.165 (2) (b),
5 971.165 (2) (c), 971.165 (3) (am), 973.017, 973.09 (2) (c) and 973.09 (6) of the
6 statutes; **relating to:** creating a plea and verdict of guilty but mentally ill in
7 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 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 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 social 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. Under the bill, a person 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 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 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 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 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.** 48.30 (5) (c) (intro.) of the statutes is amended to read:

2 48.30 (5) (c) (intro.) If the court finds that the child was not responsible by
3 reason of mental disease or defect, as described under s. 971.15 ~~(1) and (2)~~ (1g) (a)
4 and (1r), the court shall dismiss the petition with prejudice and shall also do one of
5 the following:

6 **SECTION 2.** 51.20 (19) (am) of the statutes is created to read:

7 51.20 (19) (am) If an individual who was found guilty but mentally ill under
8 s. 971.163 or 971.165 was involuntarily committed under this section, the
9 department shall, upon the individual's discharge, prepare a report for the
10 department of corrections that contains all of the following:

11 1. The individual's diagnosis.

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

14 3. The course of treatment of the individual while he or she was in the
15 treatment facility.

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

18 5. Recommendations for future treatment.

19 **SECTION 3.** 51.37 (8) (a) of the statutes is amended to read:

20 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
21 inmate who is found to be mentally ill or drug dependent except that the petition

1 shall be made to the court that made the finding or, if the prisoner or inmate is
2 detained by transfer, to the circuit court of the county in which he or she is detained.
3 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
4 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
5 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
6 the prison or county jail or house of correction unless it is past his or her release date
7 as determined under s. 302.11, in which case he or she shall be discharged, subject
8 to s. 973.017 (3) (b), if applicable.

9 **SECTION 4.** 51.37 (8m) of the statutes is created to read:

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

14 (a) The individual's diagnosis.

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

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

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

21 (e) Recommendations for future treatment.

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

23 302.11 **(6m)** An inmate who was found guilty but mentally ill under s. 971.163
24 or 971.165 and who is released on parole under sub. (1) or (1g) (b) or s. 304.02 or
25 304.06 (1) shall be required as a condition of his or her parole to continue or to seek

1 treatment recommended by the department or by the department of health and
2 social services. In determining whether treatment should be a condition of the
3 inmate's parole, the department shall consider any reports prepared by the
4 department of health and social services under s. 51.20 (19) (am) or 51.37 (8m).

5 **SECTION 6.** 971.06 (1) (am) of the statutes is created to read:

6 971.06 (1) (am) Guilty but mentally ill, subject to s. 971.163.

7 **SECTION 7.** 971.15 (1) of the statutes is renumbered 971.15 (1r).

8 **SECTION 8.** 971.15 (1g) (b) of the statutes is created to read:

9 971.15 (1g) (b) In ss. 971.15 to 971.165, "mental illness" or "mentally ill" means
10 a substantial disorder of thought, mood or behavior that afflicted a person at the time
11 that he or she engaged in criminal conduct and that impaired the person's judgment.

12 **SECTION 9.** 971.15 (2) of the statutes is renumbered 971.15 (1g) (a).

13 **SECTION 10.** 971.15 (2m) of the statutes is created to read:

14 971.15 (2m) A person is not relieved of criminal responsibility and may be
15 found guilty but mentally ill if, at the time the person engaged in criminal conduct,
16 he or she was suffering from a mental illness but did not lack substantial capacity
17 either to appreciate the wrongfulness of his or her conduct or conform his or her
18 conduct to the requirements of law as a result of mental disease or defect.

19 **SECTION 11.** 971.16 (3) of the statutes is amended to read:

20 971.16 (3) Not less than 10 days before trial, or at any other time that the court
21 directs, any physician or psychologist appointed under sub. (2) shall file a report of
22 his or her examination of the defendant with the judge, who shall cause copies to be
23 transmitted to the district attorney and to counsel for the defendant. The Except as
24 provided in s. 971.163 (2) (a) and (3), the contents of the report shall be confidential
25 until the physician or psychologist has testified or at the completion of the trial. The

1 report shall contain an opinion regarding the ability of the defendant to appreciate
2 the wrongfulness of the defendant's conduct or to conform the defendant's conduct
3 with the requirements of law at the time of the commission of the criminal offense
4 charged and, if sufficient information is available to the physician or psychologist to
5 reach an opinion, his or her opinion on whether the defendant needs medication or
6 treatment and whether the defendant is not competent to refuse medication or
7 treatment for the defendant's mental condition. The defendant is not competent to
8 refuse medication or treatment if, because of mental illness, developmental
9 disability, alcoholism or drug dependence, the defendant is incapable of expressing
10 an understanding of the advantages and disadvantages of accepting medication or
11 treatment, and the alternatives to accepting the particular medication or treatment
12 offered, after the advantages, disadvantages and alternatives have been explained
13 to the defendant.

14 **SECTION 12.** 971.163 of the statutes is created to read:

15 **971.163 Entry of plea of guilty but mentally ill.** (1) If a defendant has
16 entered a plea of not guilty by reason of mental disease or defect and has been
17 examined under s. 971.16, the defendant may waive his or her right to a trial under
18 s. 971.165 and, with the approval of the district attorney, enter a plea of guilty but
19 mentally ill in lieu of a plea of guilty or no contest.

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

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

24 (b) The court holds a hearing on the issue of the defendant's mental illness at
25 which the parties may present evidence.

1 (c) Based on the review of reports under par. (a) and the hearing held under par.
2 (b), the court is satisfied that the defendant was mentally ill at the time that he or
3 she committed the criminal offense charged.

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

6 **SECTION 13.** 971.165 (2) of the statutes is renumbered 971.165 (2) (intro.) and
7 amended to read:

8 971.165 (2) (intro.) If the plea of not guilty by reason of mental disease or defect
9 is tried to a jury, the court shall inform the jury that of all of the following:

10 (a) That the effect of a verdict of not guilty by reason of mental disease or defect
11 is that, in lieu of criminal sentence or probation, the defendant will be committed to
12 the custody of the department of health and social services and will be placed in an
13 appropriate institution unless the court determines that the defendant would not
14 pose a danger to himself or herself or to others if released under conditions ordered
15 by the court.

16 (2m) No verdict on the plea of not guilty by reason of mental disease or defect
17 may be valid or received unless agreed to by at least five-sixths of the jurors.

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

19 971.165 (2) (b) That the jury may find the defendant guilty but mentally ill if
20 the jury finds all of the following:

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

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

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

2 971.165 (2) (c) That the effect of a verdict of guilty but mentally ill is that the
3 defendant will receive a criminal sentence or probation and may be required to
4 undergo treatment for his or her mental illness.

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

6 971.165 (3) (am) If a defendant is found guilty but mentally ill, the court shall
7 enter a judgment of conviction and shall either impose or withhold sentence under
8 s. 973.017.

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

10 **973.017 Sentence of person found guilty but mentally ill. (1)** If a
11 defendant is found guilty but mentally ill under s. 971.163 or 971.165, the court, by
12 order, may impose sentence under this chapter, withhold sentence, or impose
13 sentence under s. 973.15 and stay its execution. Except as provided in s. 973.09 (1)
14 (c) or if probation is prohibited for a particular offense by statute, if the court
15 withholds sentence or imposes sentence and stays its execution for an offense, the
16 court may place the person on probation under s. 973.09.

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

19 (a) That the department of corrections, or a person designated by the
20 department of corrections, evaluate the defendant to determine the defendant's
21 treatment needs.

22 (b) That the department of corrections provide or arrange for the provision of
23 appropriate treatment, if necessary, for the defendant's mental illness.

24 (3) (a) If a defendant who is found guilty but mentally ill is serving a sentence
25 of imprisonment or is confined as a condition of probation, he or she may be

1 transferred or committed for treatment to the department of health and social
2 services under s. 51.20 (1) (a) or (ar) or 51.37 (5). Any time spent by the defendant
3 in a state treatment facility due to a transfer or commitment under s. 51.20 (1) (a)
4 or (ar) or 51.37 (5) shall be included as part of the individual's sentence.

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

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

10 973.09 (2) (a) 1. Except as provided in subd. 2. and par. (c), for misdemeanors,
11 not less than 6 months nor more than 2 years.

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

13 973.09 (2) (b) 1. Except as provided in subd. 2. and par. (c), for felonies, not less
14 than one year nor more than either the statutory maximum term of imprisonment
15 for the crime or 3 years, whichever is greater.

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

17 973.09 (2) (c) If the probationer was found guilty but mentally ill under s.
18 971.163 or 971.165, not less than 5 years.

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

20 973.09 (6) If a defendant who is found guilty but mentally ill under s. 971.163
21 or 971.165 is placed on probation, all of the following apply:

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

23 1. Order the department of corrections, or a person designated by the
24 department of corrections, to evaluate the defendant to determine the defendant's
25 treatment needs.

1 2. Order that the department of corrections provide or arrange for the provision
2 of appropriate treatment, if necessary, that is recommended as a result of the
3 evaluation under subd. 1.

4 3. Order as a condition of probation that the defendant undergo the evaluation
5 required under subd. 1. and that he or she receive the appropriate mental health
6 treatment, if necessary, that is recommended as a result of that evaluation.

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

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

13 (d) The defendant may be committed for treatment to the department of health
14 and social services under s. 51.20 (1) (a).

15 **SECTION 22. Initial applicability.**

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

18 **(END)**