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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy
(AC-JPP)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Assembly

Record of Committee Proceedings

Committee on Judiciary and Personal Privacy

Assembly Bill 516

Relating to: creating a plea and verdict of guilty but mentally ill in certain criminal cases

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.

October 5, 1999 Referred to committee on Judiciary and Personal Privacy.

October 12, 1999 **PUBLIC HEARING HELD**

Present: (8) Representatives Huebsch, Gundrum, Walker,
Suder, Grothman, Sherman, Colon and Hebl.
Excused: (1) Representative Staskunas.

Appearances for

- Rep. Scott Suder, 69th Assembly District
- Rep. Scott Walker, 14th Assembly District

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Rep. Carol Owens, 53rd Assembly District
- Rep. Bonnie Ladwig, 63rd Assembly District
- Sen. Bob Welch, 14th Senate District

Registrations against

- None.

February 29, 2000 **PUBLIC HEARING HELD**

Present: (4) Representatives Huebsch, Gundrum, Suder and
Sherman.
Excused: (5) Representatives Walker, Grothman, Colon,
Hebl and Staskunas.

Appearances for

- Representative Scott Suder, 69th Assembly District

Appearances against

- Harry Hertel, Criminal Law Section, State Bar of Wisconsin

Appearances for Information Only

- None.

Registrations for

- Tom Sykora, 67th Assembly District

Registrations against

- None.

March 1, 2000

EXECUTIVE SESSION

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Excused: (0) None.


Moved by Representative Staskunas, seconded by Representative Hebl, that **Assembly Bill 516** be recommended for passage.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Excused:(0) None.

PASSAGE RECOMMENDED, Ayes 9, Noes 0, Excused 0


Robert Delaporte
Committee Clerk

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 3-1-00
 Moved by: Stask. Seconded by: Hebl
 AB: 516 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ SR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|---|--|
| <input checked="" type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

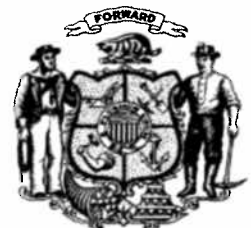
Totals: 9 _____

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: February 14, 2000

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 516, Relating to Creating a Plea and Verdict of Guilty
But Mentally Ill in Certain Criminal Cases

This memorandum describes the provisions of 1999 Assembly Bill 516.

A. CURRENT LAW ON RESPONSIBILITY FOR CRIMINAL CONDUCT

Under current law, a person is not responsible for criminal conduct "if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law." [s. 971.15 (1), Stats.] For purposes of the standard, "mental disease" is an abnormal condition of the mind which substantially affects mental or emotional processes; "mental defect" is that degree of mental retardation which results in a substantial impairment of intellectual capacity. [Wis. JI-Criminal, ss. 605 and 605a.]

Lack of criminal responsibility is an affirmative defense, raised by the defendant by pleading not guilty by reason of mental disease or defect. [ss. 971.06 and 971.15 (3), Stats.] Following a plea of not guilty by reason of mental disease or defect, at least one physician or psychologist is appointed by the court to examine the defendant and to testify at trial. [s. 971.16 (2), Stats.] The examining physician or psychologist is required to prepare a report concerning the ability of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct with the requirements of law at the time of the commission of the alleged criminal offense and, if sufficient information is available, to reach an opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. [s. 971.16 (3), Stats.] Current law also permits the defendant to be examined by a physician, psychologist or other expert of the defendant's choice. [s. 971.16 (4), Stats.]

The trial of a defendant who has pleaded not guilty by reason of mental disease or defect is bifurcated: the judge or jury first determines the issue of guilt and, if the defendant is found

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. [s. 971.165, Stats.] If a defendant is found not responsible for his or her criminal conduct due to mental disease or defect, the person is committed for treatment to the Department of Health and Family Services for a specified period of time generally not exceeding 2/3 of the maximum term of imprisonment that could be imposed for the crime charged. [s. 971.17 (1), Stats.]

B. ASSEMBLY BILL 516

1. Offenses to Which the Bill Applies

Assembly Bill 516 provides a new plea and verdict alternative for persons charged with homicide offenses who enter a plea of not guilty by reason of mental disease or defect. Homicide offenses covered by the bill are: first-degree intentional homicide, s. 940.01, Stats.; first-degree reckless homicide, s. 940.02, Stats.; felony murder, s. 940.03, Stats.; second-degree intentional homicide, s. 940.05, Stats.; second-degree reckless homicide, s. 940.06, Stats.; homicide resulting from negligent control of a vicious animal, s. 940.07, Stats.; homicide by negligent handling of a dangerous weapon, explosive or fire, s. 940.08, Stats.; homicide by intoxicated use of a vehicle or firearm, s. 940.09, Stats.; and homicide by negligent operation of a vehicle, s. 940.10, Stats.

2. Verdict of Guilty But Mentally Ill

Under Assembly Bill 516, a person charged with a homicide offense may be found "guilty but mentally ill" if, at the time the person engaged in criminal conduct, he or she was suffering from a mental illness but did not lack substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law as a result of mental disease or defect. Under the bill, "mental illness" means a substantial disorder of thought, mood or behavior that afflicted a person at the time that he or she engaged in criminal conduct and that impaired the person's judgment. The bill provides that a person who is found guilty but mentally ill is not relieved of criminal responsibility.

3. Changing Plea of Not Guilty by Reason of Mental Disease or Defect to Guilty But Mentally Ill

The bill provides that if a defendant charged with a homicide offense enters a plea of not guilty by reason of mental disease or defect the defendant may, after he or she has been examined by a court-appointed physician or psychologist, waive his or her right to a trial on the issue and, with the approval of the district attorney, withdraw the plea and enter a plea of guilty but mentally ill. The court may accept a plea of guilty but mentally ill under that circumstance if: (a) the court, with the defendant's consent, has reviewed the reports of all the examinations conducted by a court-ordered physician or psychologist and any expert utilized by the defendant; (b) the court holds a hearing on the issue of the defendant's mental illness and allows the parties to present evidence at the hearing; (c) based on its review of the reports and evidence derived from the hearing, the court is satisfied that the defendant was mentally ill at the time the criminal offense was committed; and (d) the defendant states that he or she is willing to participate in appropriate mental health treatment that is recommended by a physician, psychologist or mental health worker who is responsible for his or her mental care and treatment.

4. Jury Finding of Guilty But Mentally Ill

Assembly Bill 516 provides that if a defendant is charged with a homicide offense and has entered a plea of not guilty by reason of mental disease or defect, the court must, in addition to providing the jury information on the effect of that plea, inform the jury:

a. That the jury may find the defendant guilty but mentally ill if:

- (1) The jury finds beyond a reasonable doubt that the defendant did not lack substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law as a result of mental disease or defect; and
- (2) The jury finds to a reasonable certainty by the greater weight of the credible evidence that the defendant was mentally ill at the time that he or she committed the offense.

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

5. Judgment; Disposition

Under the bill, if a defendant charged with a homicide offense is found guilty but mentally ill, the court enters a judgment of conviction and imposes a sentence. If the sentence places the defendant in the custody of the Department of Corrections by a sentence of imprisonment or probation, the court must also order the department to evaluate the person for treatment and provide or arrange for the provision of any necessary treatment. The bill authorizes the necessary and appropriate mental health treatment as a condition of probation, parole or extended supervision.

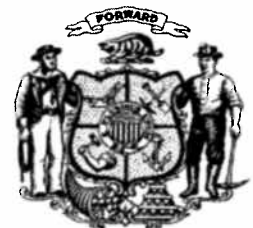
A person found guilty but mentally ill and imprisoned may be committed to a state facility for treatment in the same manner as provided under current law for a person who has been convicted and sentenced to imprisonment.

If you have any questions or need additional information, contact me directly at the Legislative Council Staff offices.

DD:rv;jal;wu



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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AB 516
folder

DATE: February 28, 2000

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Disqualification of Judges Assigned to Temporary Service in the Supreme
Court Under 1999 Assembly Joint Resolution 96

1999 Assembly Joint Resolution 96, a proposed constitutional amendment, authorizes the Wisconsin Supreme Court to assign on a temporary basis any person who has been elected to and is serving as a court of appeals judge to assist in the proper disposition of judicial business in the supreme court when it is necessary to provide seven justices for the consideration of that business. Under the proposal, the judge must be assigned by lot from all judges who are eligible to be assigned.

At the January 27, 2000 public hearing on Assembly Joint Resolution 96, questions were raised concerning when a court of appeals judge who is assigned to assist the supreme court would be required to disqualify himself or herself from assisting in a particular case. Attached to this memorandum is s. 757.19, Stats., which sets forth the circumstances under which a judge must disqualify himself or herself from an action or proceeding and the procedure for doing so. In particular, questions were raised concerning a court of appeals judge who as a court of appeals judge handled a case currently before the supreme court and who is assigned by lot to assist the supreme court with that case. Note that s. 757.19 (2) (e), Stats., provides that a judge of an appellate court who previously handled the action or proceeding while a judge of an inferior court must disqualify himself or herself from the action or proceeding.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:rv:ksm;tlu

Attachment

Section 757.19, Stats.

757.19 Disqualification of judge. (1) In this section, "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

(2) Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

(a) When a judge is related to any party or counsel thereto or their spouses within the 3rd degree of kinship.

(b) When a judge is a party or a material witness, except that a judge need not disqualify himself or herself if the judge determines that any pleading purporting to make him or her a party is false, sham or frivolous.

(c) When a judge previously acted as counsel to any party in the same action or proceeding.

(d) When a judge prepared as counsel any legal instrument or paper whose validity or construction is at issue.

(e) When a judge of an appellate court previously handled the action or proceeding while judge of an inferior court.

(f) When a judge has a significant financial or personal interest in the outcome of the matter. Such interest does not occur solely by the judge being a member of a political or taxing body that is a party.

(g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

(3) Any disqualification that may occur under sub. (2) may be waived by agreement of all parties and the judge after full and complete disclosure on the record of the factors creating such disqualification.

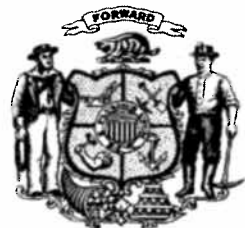
(4) Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

(5) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 751.03.

(6) In addition to other remedies, an alleged violation under this section or abuse of the disqualification procedure shall be referred to the judicial commission.



WISCONSIN STATE LEGISLATURE



Representative Scott Walker
Testimony on AB 516 (Guilty, But Mentally III)

Date?

On December 1, 1993, a former student at Wauwatosa West High School entered the building and killed the associate principal. Two days later, Leonard McDowell was charged with first-degree intentional homicide.

Three mental health experts who had examined McDowell concluded that he was not mentally competent. Thankfully, another psychiatrist gave a different version to Judge Jeffrey Wagner who concluded that McDowell was mentally fit to take part in court proceedings and face a murder charge.

During the trial, a student at Wauwatosa West sent me a note about the insanity plea. In her letter, she raised serious questions about the issue and asked me to work on changing the law.

Ultimately, we contacted Legislative Council and found that 13 states (including Michigan and Illinois have Guilty, But Mentally III (GBMI) laws. Michigan was the first state to pass such a law in 1975 and the Illinois Supreme Court just upheld the 1981 law in a case on April 22nd of this year.

We recognize that the use of the insanity plea is rare and that the finding of "non guilty by reason of mental disease or defect" is even more rare. Looking at the results in Michigan and Illinois, we anticipate a prison population of 58 inmates with a GBMI plea over the next few years.

Our interest in providing an alternative to the insanity plea is not based on "run-away abuse" of the defense, but of concern in specific cases. One such case involves William Howard Brookins.

On March 25, 1981, Brookins shot four people in the head after a night of partying that included drinking and drugs. He ended up killing three people and was convicted in 1981 on three counts of first degree intentional homicide. Brookins received three life sentences plus 20 years. Brookins, however, contended that his chronic drug abuse left him obsessively paranoid about the supposed "contract" out on him for a \$500 debt he owed for drugs.

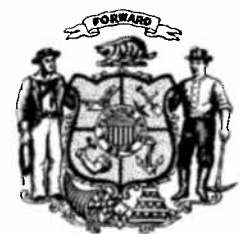
Brookins served seven years a Waupun before he was transferred to Columbia for another five years. At that point, he filed for a new trial and his case was reopened. Judge Frank Crivello accepted his argument that Brookins was criminally insane because of his delusions. On December 3, 1993, Judge Crivello ordered Brookins removed from prison and committed to Mendota for treatment.

The treatment was either profoundly successful and speedy or unnecessary, because in April of 1995, a Mendota psychiatrist testified that Brookins was well and could receive a conditional release. He was release from Mendota on July 14, 1995 to a half way house in Milwaukee.

AB 516 provides for a plea and verdict of GBMI. The bill (as did AB 295 and AB 59 during the last two sessions) recognizes that a person may have suffered from mental illness at the time of the criminal conduct, but that the mental illness did not result in the person lacking the capacity either to appreciate the wrongfulness of his or her conduct or to conform that conduct to the requirements of the law.



WISCONSIN STATE LEGISLATURE



SCOTT SUDER

State Representative • 69th Assembly District

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TESTIMONY BEFORE THE STATE ASSEMBLY
CORRECTIONS AND THE COURTS COMMITTEE

ASSEMBLY BILL 516

Date ?

GUILTY BUT MENTALLY ILL

Thank you Chairman Huebsch, Fellow Committee
Members and distinguished guests.

Assembly Bill 516 is a measure aimed at closing what
a so-called “legal loophole” which currently exists in our
judicial process. Most, if not all of us have heard the public
outcry over abuse of Wisconsin’s insanity plea.

Assembly Committee Assignments:

Waste-Cutters Task Force, Chairman • Campaigns and Elections, Vice Chairman • Corrections and the Courts, Vice Chairman • Transportation
Agriculture • Judiciary and Personal Privacy • American Legislative Exchange Council Criminal Justice Task Force

The plea “not guilty by reason of mental disease or defect” has been abused by certain defendants and the attorneys representing them throughout the years. This verdict has been rendered in some cases in which a defendant’s “mentally ill” state is highly questionable.

This plea has, in effect, allowed criminals who deserve prison time to avoid incarceration and further victimize society following their discharge from a mental treatment facility.

Take for instance, the recent case of Salim Amara. For those of you who are unfamiliar with this case, please allow me cite the facts for you. Salim Amara intentionally started a bus fire on a Madison bus – seriously burning a former Marathon County resident and four other victims.

Amara carried a 5-gallon bucket of gasoline onto the bus, dumping the fuel inside and lighting it. Former Marathon County resident Eric Nelson was severely burned as a direct result of Amara's crime and lingered in a Madison hospital for nearly a year. As a stated, four other passengers were also severely burned. Their lives and the lives of their loved ones will never be the same.

Salim Amara tried to use the system against his victims, plead not guilty by reason of mental disease. Prior to sentencing, he could have been released into the community under supervision or have been sent to a mental institution, where he would have had the right to petition every six months for his release.

Fortunately, Amara was convicted and sentenced to the maximum sentence and was not able to exploit this legal loophole at the expense of his victims. However, Amara still retains the right to petition every six months for his release.

One of the victims' fathers (whose name, out of respect to the family will not be used at this hearing) said it best: "My greatest fear is that in a few years he will be declared "cured" and will be set free."

This is certainly not the first, nor the last case of this kind to attempt to exploit our legal system. Representative Walker can also provide you with other cases. But let me assure you, in my conversations with my colleagues from other states on the National Criminal Justice Task Force that I serve on see a clear necessity for a tougher legal standard for such heinous crimes.

In fact, 13 states in this Republic already have a Guilty But Mentally Ill statute, including Illinois and Michigan.

AB 516 is modeled after the legislation in our neighboring states. It provides a new tool for prosecutors and juries. AB 516 would allow a judge or jury to find a person, "guilty but mentally ill" and send that person to prison where a portion of that sentence could be spent in treatment through the department of corrections.

Let me be perfectly clear. Criminals who need mental treatment will be able to receive the help they need under guilty but mentally ill. However, when they no longer need treatment, they will have to serve the remaining portion of their sentence in prison.

Now, I'm certain members of the legal community, particularly defense and trial attorneys won't particularly like this bill due to self-interest. However, when you consider this legislation, bear in mind the use of the plea not guilty by reason of mental defect in these and other cases which don't make a whole lot of common sense.

Think of the victims and their families. Consider the travesty of justice that could occur if individuals like Amara are granted petitions for release, or allowed to roam free in the community after being deemed "sane".

Personally, I can't imagine anyone ever thinking such people are no longer a threat to society. The time is now to enact a guilty but mentally ill standard to empower prosecutors and judges.

This is nothing short of a victim's rights bill which just makes sense.

Thank you Chairman Huebsch for this opportunity to testify before the Judiciary and Personal Privacy Committee today.

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