

## 2001 ASSEMBLY BILL 569

October 15, 2001 – Introduced by Representatives SUDER, WALKER, OWENS, AINSWORTH, J. FITZGERALD, FREESE, GROTHMAN, GUNDERSON, GUNDRUM, HUEBSCH, JENSEN, KREIBICH, LADWIG, M. LEHMAN, LOEFFELHOLZ, MUSSER, NASS, OLSEN, PETROWSKI, PETTIS, STARZYK and SYKORA, cosponsored by Senators ROESSLER, S. FITZGERALD, HUELSMAN and WELCH. Referred to Committee on Criminal Justice.

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) and 973.09 (2) (b) 1.; and *to create* 51.20  
3           (19) (am), 51.37 (8m), 302.113 (7m), 302.114 (5) (dm), 971.06 (1) (am), 971.15  
4           (1g) (b), 971.15 (2m), 971.163, 971.165 (2g), 971.165 (3) (am), 973.017, 973.09  
5           (2) (b) 1m. and 973.09 (6) of the statutes; **relating to:** creating a plea and  
6           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 the 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 combined term of confinement and extended supervision 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 confinement 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 or herself or others. To involuntarily commit for treatment a person who has been convicted and sentenced to confinement, 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

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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. The person may be required to receive treatment as a condition of probation or extended supervision. Finally, a person found guilty but mentally ill and confined in jail or prison 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 confinement in jail or prison.

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 possible after sentence, together with a copy of the judgment of  
19 conviction and, if applicable, a copy of any report specified in s. 973.017 (4). The  
20 warden or superintendent shall deliver to the sheriff a receipt acknowledging receipt  
21 of the person, naming the person, which receipt the sheriff shall file in the office of  
22 the clerk who issued the copy of the judgment of conviction. When transporting or  
23 delivering the person to any of the Wisconsin state prisons the sheriff shall be  
24 accompanied by an adult of the same sex as the person. If the sheriff and the person  
25 are of the same sex, this requirement is satisfied and a 3rd person is not required.

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1           **SECTION 4.** 302.113 (7m) of the statutes is created to read:

2           302.113 **(7m)** An inmate who was found guilty but mentally ill under s. 971.163  
3 or 971.165 and who is released on extended supervision under this section is required  
4 as a condition of his or her extended supervision to participate in any necessary and  
5 appropriate treatment that is recommended by the department of corrections or by  
6 the department of health and family services. In determining what treatment, if any,  
7 to recommend as a condition of the inmate's extended supervision, 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.** 302.114 (5) (dm) of the statutes is created to read:

11           302.114 **(5)** (dm) If the court grants the petition for release to extended  
12 supervision of an inmate who was found guilty but mentally ill under s. 971.163 or  
13 971.165, the court shall require the inmate as a condition of his or her extended  
14 supervision to participate in any necessary and appropriate treatment that is  
15 recommended by the department of corrections or by the department of health and  
16 family services. In determining what treatment, if any, to recommend as a condition  
17 of the inmate's extended supervision, the department of corrections shall consider  
18 any reports prepared by the department of health and family services under s. 51.20  
19 (19) (am) or 51.37 (8m).

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

21           938.30 **(5)** (c) (intro.) If the court finds that the juvenile was not responsible by  
22 reason of mental disease or defect, as described under s. 971.15 ~~(1) and (2)~~ (1g) (a)  
23 and (1r), the court shall dismiss the petition with prejudice and shall also do one of  
24 the following:

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

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1           971.06 **(1)** (am) Guilty but mentally ill, if the defendant is charged with a crime  
2 under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10.

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

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

5           971.15 **(1g)** (b) In this section and ss. 971.16 to 971.165, “mental illness” means  
6 a substantial disorder of thought, mood or behavior that impairs a person’s  
7 judgment.

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

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

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

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

18          971.16 **(3)** (intro.) Not less than 10 days before trial, or at any other time that  
19 the court directs, any physician or psychologist appointed under sub. (2) shall file a  
20 report of his or her examination of the defendant with the judge, who shall cause  
21 copies to be transmitted to the district attorney and to counsel for the defendant. The  
22 Except as provided in ss. 971.163 (2) (a) and (3) and 973.017 (4), the contents of the  
23 report shall be confidential until the physician or psychologist has testified or at the  
24 completion of the trial. The report shall contain an opinion regarding the ability of  
25 the defendant to appreciate the wrongfulness of the defendant’s conduct or to

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1 conform the defendant's conduct with the requirements of law at the time of the  
2 commission of the criminal offense charged and, if sufficient information is available  
3 to the physician or psychologist to reach an opinion, his or her opinion on whether  
4 the defendant needs medication or treatment and whether the defendant is not  
5 competent to refuse medication or treatment. The defendant is not competent to  
6 refuse medication or treatment if, because of mental illness, developmental  
7 disability, alcoholism or drug dependence, and after the advantages and  
8 disadvantages of and alternatives to accepting the particular medication or  
9 treatment have been explained to the defendant, one of the following is true:

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

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

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

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

22 (b) The court holds a hearing on the issue of whether the defendant had a  
23 mental illness at the time the defendant committed the criminal offense charged and  
24 allows the parties to present evidence at the hearing.

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

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

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

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

11 971.165 **(2g)** If a defendant charged with a crime under s. 940.01, 940.02,  
12 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10 has entered a plea of not  
13 guilty by reason of mental disease or defect and the defendant's plea is tried to a jury,  
14 the court shall, in addition to providing to the jury the information required under  
15 sub. (2), inform the jury of all of the following:

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

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

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



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

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

5 971.165 (3) (am) If a defendant charged with a crime under s. 940.01, 940.02,  
6 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10 is found guilty but mentally  
7 ill, the court shall enter a judgment of conviction and shall either impose or withhold  
8 sentence under s. 973.017.

9 **SECTION 16.** 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, the court may place  
15 the person on probation under s. 973.09 if the court withholds sentence or imposes  
16 sentence and stays its execution for an offense.

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

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

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

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

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

5 **(4)** If a defendant who is found guilty but mentally ill is sentenced to the  
6 Wisconsin state prisons, the clerk of court shall attach all of the following to the  
7 judgment of conviction that is delivered with the defendant under s. 302.06 to the  
8 reception center designated by the department:

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

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

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

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

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

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

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

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

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1           973.09 **(2)** (b) 1m. If the probationer was found guilty but mentally ill under  
2 s. 971.163 or 971.165, not less than 5 years.

3           **SECTION 20.** 973.09 (6) of the statutes is created to read:

4           973.09 **(6)** (a) If a defendant who is found guilty but mentally ill under s.  
5 971.163 or 971.165 is placed on probation, the court shall do all of the following:

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

8           2. Order that the department provide or arrange for the provision of necessary  
9 and appropriate treatment that is recommended as a result of the evaluation under  
10 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 a 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) A defendant placed on probation after being found guilty but mentally ill  
21 under s. 971.163 or 971.165 may be committed for treatment to the department of  
22 health and family services under s. 51.20.

23           **SECTION 21. Initial applicability.**

24           (1) GUILTY BUT MENTALLY ILL PLEA. The treatment of sections 51.20 (19) (am),  
25 51.37 (8m), 302.06, 302.113 (7m), 302.114 (5) (dm), 971.06 (1) (am), 971.15 (1g) (b)

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**SECTION 21**

1 and (2m), 971.16 (3) (intro.), 971.163, 971.165 (2g) and (3) (am), 973.017, 973.08 (1),  
2 973.09 (2) (b) 1. and 1m., and 973.09 (6) of the statutes first applies to offenses  
3 committed on the effective date of this subsection.

4 (END)