

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: rryan

Wanted: Soon

Identical to LRB: 1999 AB 516

For: Assembly Republican Caucus

By/Representing: Raschka

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - procedure

Extra Copies:

MGD

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Raschka - AM1,

Topic:

Guilty but mentally ill plea

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan 06/23/2001	csicilia 06/25/2001	pgreensl 06/25/2001	_____	lrb_docadmin 06/26/2001		
/2	rryan 06/27/2001	csicilia 06/27/2001	jfrantze 06/27/2001	_____	lrb_docadmin 06/27/2001		

FE Sent For:

<END>

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/21/2001**

Received By: **rryan**

Wanted: **Soon**

Identical to LRB: **1999 AB 516**

For: **Assembly Republican Caucus**

By/Representing: **Raschka**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

MGD

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Raschka - AM1,

Topic:

Guilty but mentally ill plea

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan 06/23/2001	csicilia 06/25/2001	pgreensl 06/25/2001	_____	lrb_docadmin 06/26/2001		

FE Sent For:

1/2 cjs 6/26
01

6/27

Self
6/27
<END>

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: rryan

Wanted: Soon

Identical to LRB: 1999 AB 516

For: Assembly Republican Caucus

By/Representing: Raschka

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - procedure

Extra Copies: MGD

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Raschka - AM1,

Topic:

Guilty but mentally ill plea

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan	1 ijs 6/25 01	6/25 PR	==			

FE Sent For: <END>

Motions:

1. **Reestablishing Court Authority to Suspend or Revoke a Juvenile's Driver's License for Failure to pay Non-Driving Forfeitures.** DOT should be able to absorb the **\$18,500 cost** (Ladwig, Motion #48)
2. **Repeal a recent change in the time period defendants have to answer lawsuits, restoring the time period to 20 days.** Amend to include only bank foreclosures. *Fiscal effect - None.* (Suder, Motion #121)
3. **Eliminate three additional prison chaplain positions.** *Cost savings - None.* DOC does not have to spend an additional \$138,600 (Suder, Motion #76)
4. **Faith-Based Approaches to Crime prevention and Justice based on Assembly Bill 443.** *Cost \$100,000 GPR in the first year, \$100,000 GPR in the second year.* Source of funding Minority Business Economic Development Program in the Department of Commerce. (Jensen, Motion #182)
5. **District Attorneys Rock (0.5) take .25 positions from Rock and give to Ashland**
6. **Parole Commission Membership and Staffing [LFB paper 353] (Comparative Document JFC/Gov. p. 265, #6)**

Cut Governor's proposal in half. Provide 1.0 parole commissioner position and 2.0 assistants. *Cost savings \$336,400* Use money to fund additional court interpreters.
7. Provide 1.0 two-year interpreter coordinator position to develop a court interpreter certification and training program. Beginning in 2002-2003, increase reimbursement to counties from \$35 per half day to \$30 for the first hour and \$15 for each additional .5 hour for qualified interpreters and to \$40 for the first hour and \$20 for each additional .5 hour for certified interpreters. *Funded through previous JFC appropriation and savings from cut in Parole Commission staffing.*

Misc.:

Guilty, but mentally ill (1999 AB 516) LRB 1717
Creating a plea and verdict of guilty but mentally ill in certain criminal cases – as an alternative to a guilty verdict or a not guilty by reason of mental disease or defect verdict.

Judicial Substitution ban (1999 AB 201)
Eliminating substitution of judges in criminal matters.

2001

Date (time) needed _____

LRB b 1309 1 1

**ARC CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

RLR:ajs: _____

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

LPS: proof
all amended
text w/
folio

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**

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.

ASSEMBLY BILL 516

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

ASSEMBLY BILL 516

~~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.~~

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

#. Page 656, line 10: after that line insert:

- ① ~~SECTION 1.~~ ^{1966r} 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.~~ ^{1967r} 51.37 (8m) of the statutes is created to read: ✓✓

ASSEMBLY BILL 516

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. ¹¹ ¹⁰

14 *#. Page 1077, line 16: after that line insert:*
 SECTION 302.06 of the statutes is amended to read:
 2354c

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~~ ^{strike} possible 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. ¹¹ ¹⁰

ASSEMBLY BILL 516

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

Page 1080, line 19: after that line insert:

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

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

Page 1083, line 21: after that line insert:

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

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

ASSEMBLY BILL 516

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).
Page 1223, line 4: after that line insert:
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:
Page 1256, line 4: after that line insert:
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.
Page 1256, line 13: after that line insert:
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.

if the defendant is charged with a crime under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10

ASSEMBLY BILL 516

3999r

1 SECTION ~~13~~^{3999r} 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~~^{3999s} 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

ASSEMBLY BILL 516

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 ^{3999c}~~14~~. 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:

ASSEMBLY BILL 516

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 ^{3999u} ~~10~~ 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 # Page 1261, line 2: after that line insert: ✓
16 "SECTION ^{24014g} ~~10~~ 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.

ASSEMBLY BILL 516

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 ~~by 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. ¹¹⁰

Page 1265, line 11; after that line insert:
23 SECTION 17. 973.08 (1) of the statutes is amended to read:
24 24018r

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

ASSEMBLY BILL 516

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.

INSERT
11-10

11 ~~SECTION 21. 973.09 (2) (b) 1mo~~ of the statutes is created to read:
12 973.09 (2) ^{4025P} ~~(b) 1mo~~ ^{(b) 1mo} 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) ^{24026u} 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.

Page 1268, line 16: after that line insert:

ASSEMBLY BILL 516

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

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

7 (d) A defendant placed on probation after being found guilty but mentally ill
8 under s. 971.163 or 971.165 may be committed for treatment to the department of
9 health and family services under s. 51.20 (1) (a). 

10 **SECTION 23. Initial applicability.**

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

13 Inset 12-12 →

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1309/lins
RLR:.....

1 **Insert 11-10:**

with

2 **1.** Page 1266, line 23: delete the material beginning with that line and ending

3 **on** page 1267, line 2, and substitute:

4 **"SECTION 4024n.** 973.09 (2) (b) 1. of the statutes is amended to read:

5 973.09 (2) (b) 1. Except as provided in subd. subds. 1m. and 2., for felonies, not
6 less than one year nor more than either the statutory maximum term of
7 imprisonment for the crime or 3 years, whichever is greater.

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186.

8 **SECTION 4025n.** 973.09 (2) (b) 1. of the statutes, as affected by 2001 Wisconsin

9 Act ... (this act), is amended to read:

10 973.09 (2) (b) 1. Except as provided in subds. subd. 1m. and subject to subd. 2.,
11 the original term of probation for felonies, and bifurcated sentence misdemeanors
12 shall be not less than one year nor more than either the statutory maximum term
13 of imprisonment confinement in prison for the crime or 3 years, whichever is greater.

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186.

14 **end insert**

15
16
17 **Insert 12-12:**

18 **2.** Page 1415, line 6: after "(b) (title), 1." insert "(by SECTION 4025n)".

19 **3.** Page 1416, line 16: after that line insert:

20 **"(12r) GUILTY BUT MENTALLY ILL PLEA.** The treatment of sections 51.20 (19) (am),
21 51.37 (8m), 302.06, 302.113 (7m), 302.114 (5) (dm), 971.06 (1) (am), 971.15 (1g) (b)
22 and (2m), 971.16 (3) (intro.), 971.163, 971.165 (2g), 973.017, 973.08 (1), 973.09 (2) (b)

and (3)(am)

INIT
APP

CS
(by SECTION 4024n)

1 1. and 1m., and 973.09 (6) of the statutes first applies to offenses committed on the
2 effective date of this subsection.”

3 4. Page 1428, line 12: after “(b) (title), 1.” insert “(by SECTION 4025n)”. |



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1309/1 2

RLR:cjs:pg

RMR

ARC:.....Raschka - AM1, Guilty but mentally ill plea

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D-note

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 656, line 10: after that line insert:

3 "SECTION 1966r. 51.20 (19) (am) of the statutes is created to read:

4 51.20 (19) (am) If an individual was found guilty but mentally ill under s.
5 971.163 or 971.165 and was subsequently involuntarily committed under this
6 section, the department of health and family services or the county department
7 under s. 51.42 or 51.437, whichever is applicable, shall, upon the individual's
8 discharge, prepare a report for the department of corrections that contains all of the
9 following:

10 1. The individual's diagnosis.

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

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

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

7 5. Recommendations for future treatment.

8 **SECTION 1967r.** 51.37 (8m) of the statutes is created to read:

9 **51.37 (8m)** If an individual was found guilty but mentally ill under s. 971.163
10 or 971.165 and was subsequently transferred to or detained in a state treatment
11 facility under sub. (5), the department of health and family services shall, upon the
12 individual's discharge, prepare a report for the department of corrections that
13 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 **2.** Page 1077, line 16: after that line insert:

23 **“SECTION 3354c.** 302.06 of the statutes is amended to read:

1 **302.06 Delivery of persons to prisons.** The sheriff shall deliver to the
2 reception center designated by the department every person convicted in the county
3 and sentenced to the Wisconsin state prisons or to the intensive sanctions program
4 as soon as ~~may be~~ possible after sentence, together with a copy of the judgment of
5 conviction and, if applicable, a copy of any report specified in s. 973.017 (4). The
6 warden or superintendent shall deliver to the sheriff a receipt acknowledging receipt
7 of the person, naming the person, which receipt the sheriff shall file in the office of
8 the clerk who issued the copy of the judgment of conviction. When transporting or
9 delivering the person to any of the Wisconsin state prisons the sheriff shall be
10 accompanied by an adult of the same sex as the person. If the sheriff and the person
11 are of the same sex, this requirement is satisfied and a 3rd person is not required.”.

12 **3.** Page 1080, line 19: after that line insert:

13 “**SECTION 3367r.** 302.113 (7m) of the statutes is created to read:

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

22 **4.** Page 1083, line 21: after that line insert:

23 “**SECTION 3377d.** 302.114 (5) (dm) of the statutes is created to read:

1 302.114 (5) (dm) If the court grants the petition for release to extended
2 supervision of an inmate who was found guilty but mentally ill under s. 971.163 or
3 971.165, the court shall require the inmate as a condition of his or her extended
4 supervision to participate in any necessary and appropriate treatment that is
5 recommended by the department of corrections or by the department of health and
6 family services. In determining what treatment, if any, to recommend as a condition
7 of the inmate's extended supervision, the department of corrections shall consider
8 any reports prepared by the department of health and family services under s. 51.20
9 (19) (am) or 51.37 (8m).”.

10 **5.** Page 1223, line 4: after that line insert:

11 “**SECTION 3889r.** 938.30 (5) (c) (intro.) of the statutes is amended to read:

12 938.30 (5) (c) (intro.) If the court finds that the juvenile was not responsible by
13 reason of mental disease or defect, as described under s. 971.15 ~~(1) and (2)~~ (1g) (a)
14 and (1r), the court shall dismiss the petition with prejudice and shall also do one of
15 the following:”.

16 **6.** Page 1256, line 4: after that line insert:

17 “**SECTION 3998r.** 971.06 (1) (am) of the statutes is created to read:

18 971.06 (1) (am) Guilty but mentally ill, if the defendant is charged with a crime
19 under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10.”.

20 **7.** Page 1256, line 13: after that line insert:

21 “**SECTION 3999k.** 971.15 (1) of the statutes is renumbered 971.15 (1r).

22 **SECTION 3999L.** 971.15 (1g) (b) of the statutes is created to read:

1 971.15 (1g) (b) In this section and ss. 971.16 to 971.165, “mental illness” means
2 a substantial disorder of thought, mood or behavior that afflicted a person at the time
3 that he or she engaged in criminal conduct and that impaired the person’s judgment.

4 **SECTION 3999n.** 971.15 (2) of the statutes is renumbered 971.15 (1g) (a).

5 **SECTION 3999p.** 971.15 (2m) of the statutes is created to read:

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

13 **SECTION 3999r.** 971.16 (3) (intro.) of the statutes is amended to read:

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

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

6 **SECTION 3999s.** 971.163 of the statutes is created to read:

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

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

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

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

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

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

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

3 **SECTION 3999t.** 971.165 (2g) of the statutes is created to read:

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

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

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

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

18 (b) That, if the jury finds the defendant guilty but mentally ill, ^{is} the defendant
19 will receive a criminal sentence or probation and may be required to receive
20 treatment for his or her mental illness.

21 **SECTION 3999u.** 971.165 (3) (am) of the statutes is created to read:

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

1 **8.** Page 1261, line 2: after that line insert:

2 “**SECTION 4014g.** 973.017 of the statutes is created to read:

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

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

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

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

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

23 (4) If a defendant who is found guilty but mentally ill is sentenced to the
24 Wisconsin state prisons, the clerk of court shall attach all of the following to the

1 judgment of conviction that is delivered with the defendant under s. 302.06 to the
2 reception center designated by the department:

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

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

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

8 **9.** Page 1265, line 11: after that line insert:

9 “**SECTION 4018r.** 973.08 (1) of the statutes is amended to read:

10 973.08 (1) When any defendant is sentenced to the state prisons, a copy of the
11 judgment of conviction ~~and~~, a copy of any order for restitution under s. 973.20 and,
12 if applicable, a copy of any report specified in s. 973.017 (4) shall be delivered by the
13 officer executing the judgment to the warden or superintendent of the institution
14 when the prisoner is delivered.”.

15 **10.** Page 1266, line 23: delete the material beginning with that line and
16 ending with page 1267, line 2, and substitute:

17 “**SECTION 4024n.** 973.09 (2) (b) 1. of the statutes is amended to read:

18 973.09 (2) (b) 1. Except as provided in ~~subd.~~ subds. 1m. and 2., for felonies, not
19 less than one year nor more than either the statutory maximum term of
20 imprisonment for the crime or 3 years, whichever is greater.

21 **SECTION 4025n.** 973.09 (2) (b) 1. of the statutes, as affected by 2001 Wisconsin
22 Act (this act), is amended to read:

23 973.09 (2) (b) 1. Except as provided in ~~subds.~~ subd. 1m. and subject to subd. 2.,
24 the original term of probation for felonies, and bifurcated sentence misdemeanors

1 shall be not less than one year nor more than either the statutory maximum term
2 of ~~imprisonment~~ confinement in prison for the crime or 3 years, whichever is greater.

3 **SECTION 4025p.** 973.09 (2) (b) 1m. of the statutes is created to read:

4 973.09 (2) (b) 1m. If the probationer was found guilty but mentally ill under
5 s. 971.163 or 971.165, not less than 5 years.”.

6 **11.** Page 1268, line 16: after that line insert:

7 **“SECTION 4026u.** 973.09 (6) of the statutes is created to read:

8 973.09 (6) (a) If a defendant who is found guilty but mentally ill under s.
9 971.163 or 971.165 is placed on probation, the court shall do all of the following:

10 1. Order the department, or a person designated by the department, to evaluate
11 the defendant to determine the defendant’s treatment needs.

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

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

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

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

1 (d) A defendant placed on probation after being found guilty but mentally ill
2 under s. 971.163 or 971.165 may be committed for treatment to the department of
3 health and family services under s. 51.20 (1) (a).”

4 **12.** Page 1415, line 6: after “(b) (title), 1.” insert “(by SECTION 4025n)”.

5 **13.** Page 1416, line 16: after that line insert:

6 “(12r) GUILTY BUT MENTALLY ILL PLEA. The treatment of sections 51.20 (19) (am),
7 51.37 (8m), 302.06, 302.113 (7m), 302.114 (5) (dm), 971.06 (1) (am), 971.15 (1g) (b)
8 and (2m), 971.16 (3) (intro.), 971.163, 971.165 (2g) and (3) (am), 973.017, 973.08 (1),
9 973.09 (2) (b) 1. (by SECTION 4024n) and 1m., and 973.09 (6) of the statutes first
10 applies to offenses committed on the effective date of this subsection.”

11 **14.** Page 1428, line 12: after “(b) (title), 1.” insert “(by SECTION 4025n)”.

12 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1309/2dn

RLR:/:....

js

I redrafted this amendment to remove an extraneous word on page 7, line 18.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1309/2dn
RLR:cjs:jf

June 27, 2001

I redrafted this amendment to remove an extraneous word on page 7, line 18.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

ARC:.....Raschka – AM1, Guilty but mentally ill plea

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 656, line 10: after that line insert:

3 “**SECTION 1966r.** 51.20 (19) (am) of the statutes is created to read:

4 51.20 (19) (am) If an individual was found guilty but mentally ill under s.
5 971.163 or 971.165 and was subsequently involuntarily committed under this
6 section, the department of health and family services or the county department
7 under s. 51.42 or 51.437, whichever is applicable, shall, upon the individual's
8 discharge, prepare a report for the department of corrections that contains all of the
9 following:

10 1. The individual's diagnosis.

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

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

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

7 5. Recommendations for future treatment.

8 **SECTION 1967r.** 51.37 (8m) of the statutes is created to read:

9 **51.37 (8m)** If an individual was found guilty but mentally ill under s. 971.163
10 or 971.165 and was subsequently transferred to or detained in a state treatment
11 facility under sub. (5), the department of health and family services shall, upon the
12 individual's discharge, prepare a report for the department of corrections that
13 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 **2.** Page 1077, line 16: after that line insert:

23 **“SECTION 3354c.** 302.06 of the statutes is amended to read:

1 **302.06 Delivery of persons to prisons.** The sheriff shall deliver to the
2 reception center designated by the department every person convicted in the county
3 and sentenced to the Wisconsin state prisons or to the intensive sanctions program
4 as soon as ~~may be~~ possible after sentence, together with a copy of the judgment of
5 conviction and, if applicable, a copy of any report specified in s. 973.017 (4). The
6 warden or superintendent shall deliver to the sheriff a receipt acknowledging receipt
7 of the person, naming the person, which receipt the sheriff shall file in the office of
8 the clerk who issued the copy of the judgment of conviction. When transporting or
9 delivering the person to any of the Wisconsin state prisons the sheriff shall be
10 accompanied by an adult of the same sex as the person. If the sheriff and the person
11 are of the same sex, this requirement is satisfied and a 3rd person is not required.”.

12 **3.** Page 1080, line 19: after that line insert:

13 “**SECTION 3367r.** 302.113 (7m) of the statutes is created to read:

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

22 **4.** Page 1083, line 21: after that line insert:

23 “**SECTION 3377d.** 302.114 (5) (dm) of the statutes is created to read:

1 302.114 (5) (dm) If the court grants the petition for release to extended
2 supervision of an inmate who was found guilty but mentally ill under s. 971.163 or
3 971.165, the court shall require the inmate as a condition of his or her extended
4 supervision to participate in any necessary and appropriate treatment that is
5 recommended by the department of corrections or by the department of health and
6 family services. In determining what treatment, if any, to recommend as a condition
7 of the inmate's extended supervision, the department of corrections shall consider
8 any reports prepared by the department of health and family services under s. 51.20
9 (19) (am) or 51.37 (8m)."

10 **5.** Page 1223, line 4: after that line insert:

11 "SECTION 3889r. 938.30 (5) (c) (intro.) of the statutes is amended to read:

12 938.30 (5) (c) (intro.) If the court finds that the juvenile was not responsible by
13 reason of mental disease or defect, as described under s. 971.15 ~~(1) and (2)~~ (1g) (a)
14 and (1r), the court shall dismiss the petition with prejudice and shall also do one of
15 the following:"

16 **6.** Page 1256, line 4: after that line insert:

17 "SECTION 3998r. 971.06 (1) (am) of the statutes is created to read:

18 971.06 (1) (am) Guilty but mentally ill, if the defendant is charged with a crime
19 under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, or 940.10."

20 **7.** Page 1256, line 13: after that line insert:

21 "SECTION 3999k. 971.15 (1) of the statutes is renumbered 971.15 (1r).

22 SECTION 3999L. 971.15 (1g) (b) of the statutes is created to read:

1 **971.15 (1g) (b)** In this section and ss. 971.16 to 971.165, “mental illness” means
2 a substantial disorder of thought, mood or behavior that afflicted a person at the time
3 that he or she engaged in criminal conduct and that impaired the person’s judgment.

4 **SECTION 3999n.** 971.15 (2) of the statutes is renumbered 971.15 (1g) (a).

5 **SECTION 3999p.** 971.15 (2m) of the statutes is created to read:

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

13 **SECTION 3999r.** 971.16 (3) (intro.) of the statutes is amended to read:

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

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

6 **SECTION 3999s.** 971.163 of the statutes is created to read:

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

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

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

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

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

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

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

3 **SECTION 3999t.** 971.165 (2g) of the statutes is created to read:

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

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

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

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

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

21 **SECTION 3999u.** 971.165 (3) (am) of the statutes is created to read:

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

1 **8.** Page 1261, line 2: after that line insert:

2 “**SECTION 4014g.** 973.017 of the statutes is created to read:

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

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

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

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

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

23 (4) If a defendant who is found guilty but mentally ill is sentenced to the
24 Wisconsin state prisons, the clerk of court shall attach all of the following to the

1 judgment of conviction that is delivered with the defendant under s. 302.06 to the
2 reception center designated by the department:

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

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

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

8 **9.** Page 1265, line 11: after that line insert:

9 “SECTION 4018r. 973.08 (1) of the statutes is amended to read:

10 973.08 (1) When any defendant is sentenced to the state prisons, a copy of the
11 judgment of conviction ~~and~~, a copy of any order for restitution under s. 973.20 and,
12 if applicable, a copy of any report specified in s. 973.017 (4) shall be delivered by the
13 officer executing the judgment to the warden or superintendent of the institution
14 when the prisoner is delivered.”.

15 **10.** Page 1266, line 23: delete the material beginning with that line and
16 ending with page 1267, line 2, and substitute:

17 “SECTION 4024n. 973.09 (2) (b) 1. of the statutes is amended to read:

18 973.09 (2) (b) 1. Except as provided in ~~subd.~~ subds. 1m. and 2., for felonies, not
19 less than one year nor more than either the statutory maximum term of
20 imprisonment for the crime or 3 years, whichever is greater.

21 SECTION 4025n. 973.09 (2) (b) 1. of the statutes, as affected by 2001 Wisconsin
22 Act (this act), is amended to read:

23 973.09 (2) (b) 1. Except as provided in ~~subds.~~ subd. 1m. and subject to subd. 2.,
24 the original term of probation for felonies, and bifurcated sentence misdemeanors

1 shall be not less than one year nor more than either the statutory maximum term
2 of imprisonment confinement in prison for the crime or 3 years, whichever is greater.

3 **SECTION 4025p.** 973.09 (2) (b) 1m. of the statutes is created to read:

4 973.09 (2) (b) 1m. If the probationer was found guilty but mentally ill under
5 s. 971.163 or 971.165, not less than 5 years.”.

6 **11.** Page 1268, line 16: after that line insert:

7 “**SECTION 4026u.** 973.09 (6) of the statutes is created to read:

8 973.09 (6) (a) If a defendant who is found guilty but mentally ill under s.
9 971.163 or 971.165 is placed on probation, the court shall do all of the following:

10 1. Order the department, or a person designated by the department, to evaluate
11 the defendant to determine the defendant’s treatment needs.

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

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

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

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

