

SENATE BILL No. 704

October 11, 2001, Introduced by Senators VAN REGENMORTER, DINGELL and MC COTTER and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 36 of chapter VIII (MCL 768.36).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

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Sec. 36. (1) If the defendant asserts a defense of insanity in compliance with section 20a OF THIS CHAPTER, the defendant may be found "guilty but mentally ill" if, after trial, the trier of fact finds all of the following: ~~beyond a reasonable doubt:~~

(a) That the defendant is guilty of an offense, BEYOND A REASONABLE DOUBT.

~~(b) That the defendant was mentally ill at the time of the commission of that offense.~~

~~(c) That the defendant was not legally insane at the time of the commission of that offense.~~

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1 (B) THAT THE DEFENDANT HAS ESTABLISHED HIS OR HER MENTAL
2 RETARDATION OR MENTAL ILLNESS AT THE TIME OF THE COMMISSION OF
3 THE OFFENSE BY A PREPONDERANCE OF THE EVIDENCE BUT HAS NOT ESTAB-
4 LISHED BY A PREPONDERANCE OF THE EVIDENCE THAT HE OR SHE LACKED
5 THE SUBSTANTIAL CAPACITY EITHER TO APPRECIATE THE NATURE AND
6 QUALITY OR THE WRONGFULNESS OF HIS OR HER CONDUCT OR TO CONFORM
7 HIS OR HER CONDUCT TO THE REQUIREMENTS OF THE LAW.

8 (2) If the defendant asserts a defense of insanity in com-
9 pliance with section 20a OF THIS CHAPTER and the defendant waives
10 his OR HER right to trial, by jury or by judge, the trial judge,
11 with the approval of the prosecuting attorney, may accept a plea
12 of guilty but mentally ill in lieu of a plea of guilty or a plea
13 of nolo contendere. The judge ~~may~~ SHALL not accept a plea of
14 guilty but mentally ill until, with the defendant's consent, ~~he~~
15 THE JUDGE has examined the report or reports prepared ~~pursuant~~
16 ~~to~~ IN COMPLIANCE WITH section 20a OF THIS CHAPTER, THE JUDGE has
17 held a hearing on the issue of the defendant's mental illness OR
18 MENTAL RETARDATION at which either party may present evidence,
19 and THE JUDGE is satisfied that the defendant HAS PROVEN BY A
20 PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT was MENTALLY
21 RETARDED OR mentally ill at the time of the offense to which the
22 plea is entered. The reports shall be made a part of the record
23 of the case.

24 (3) If a defendant is found guilty but mentally ill or
25 enters a plea to that effect which is accepted by the court, the
26 court shall impose any sentence ~~which~~ THAT could be imposed
27 ~~pursuant to~~ BY law upon a defendant who is convicted of the

1 same offense. If the defendant is committed to the custody of
2 the department of corrections, ~~he~~ THE DEFENDANT shall undergo
3 further evaluation and be given such treatment as is psychiatri-
4 cally indicated for his OR HER mental illness or retardation.
5 Treatment may be provided by the department of corrections or by
6 the department of ~~mental~~ COMMUNITY health ~~after his transfer~~
7 ~~pursuant to sections 1000 or 1002 of Act No. 258 of the Public~~
8 ~~Acts of 1974, being sections 330.2000 or 330.2002 of the Michigan~~
9 ~~Compiled Laws~~ AS PROVIDED BY LAW. Sections 1004 and 1006 of
10 ~~Act No. 258 of the Public Acts of 1974 shall~~ THE MENTAL HEALTH
11 CODE, 1974 PA 258, MCL 330.2004 AND 330.2006, apply to the dis-
12 charge of ~~such a~~ THE defendant from a facility of the depart-
13 ment of ~~mental~~ COMMUNITY health to which ~~he~~ THE DEFENDANT has
14 been admitted and ~~shall apply~~ to the return of ~~such a~~ THE
15 defendant to the department of corrections for the balance of the
16 defendant's sentence. When a treating facility designated by
17 either the department of corrections or the department of
18 ~~mental~~ COMMUNITY health discharges ~~such a~~ THE defendant
19 ~~prior to~~ BEFORE the expiration of ~~his~~ THE DEFENDANT'S sen-
20 tence, that treating facility shall transmit to the parole board
21 a report on the condition of the defendant ~~which~~ THAT contains
22 the clinical facts, the diagnosis, the course of treatment, ~~and~~
23 the prognosis for the remission of symptoms, the potential for
24 recidivism, ~~and for~~ the danger OF THE DEFENDANT to himself OR
25 HERSELF or TO the public, and recommendations for future
26 treatment. ~~In the event that~~ IF the parole board ~~pursuant to~~
27 ~~law or administrative rules should consider him~~ CONSIDERS THE

1 DEFENDANT for parole, the board shall consult with the treating
 2 facility at which the defendant is being treated or from which
 3 ~~he~~ THE DEFENDANT has been discharged and a comparable report on
 4 the condition of the defendant shall be filed with the board. If
 5 ~~he~~ THE DEFENDANT is placed on parole, ~~by the parole board,~~
 6 ~~his~~ THE DEFENDANT'S treatment shall, upon recommendation of the
 7 treating facility, be made a condition of parole. ~~, and failure~~
 8 FAILURE to continue treatment except by agreement with the desig-
 9 nated facility and parole board ~~shall be a basis~~ IS GROUNDS for
 10 ~~the institution of parole violation hearings~~ REVOCATION OF
 11 PAROLE.

12 (4) If a defendant who is found guilty but mentally ill is
 13 placed on probation under the jurisdiction of the sentencing
 14 court ~~pursuant to~~ AS PROVIDED BY law, the trial judge, upon
 15 recommendation of the center for forensic psychiatry, shall make
 16 treatment a condition of probation. Reports as specified by the
 17 trial judge shall be filed with the probation officer and the
 18 sentencing court. Failure to continue treatment, except by
 19 agreement with the treating agency and the sentencing court,
 20 ~~shall be a basis~~ IS GROUNDS for ~~the institution~~ REVOCATION of
 21 probation. ~~violation hearings.~~ The period of probation shall
 22 not be for less than 5 years and shall not be shortened without
 23 receipt and consideration of a forensic psychiatric report by the
 24 sentencing court. Treatment shall be provided by an agency of
 25 the department of ~~mental~~ COMMUNITY health ~~,~~ or, with the
 26 approval of the sentencing court and at individual expense, by
 27 private agencies, private physicians, or other mental health

1 personnel. A psychiatric report shall be filed with the
2 probation officer and the sentencing court every 3 months during
3 the period of probation. If a motion on a petition to discon-
4 tinue probation is made by the defendant, the probation officer
5 shall request a report as specified from the center for forensic
6 psychiatry or any other facility certified by department of
7 ~~mental~~ COMMUNITY health for the performance of forensic psychi-
8 atric evaluation.