



# HOUSE BILL No. 4935

September 30, 1999, Introduced by Reps. Raczkowski, Julian and Scranton and referred to the Committee on Criminal Law and Corrections.

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

Sec. 36. (1) If the defendant asserts a defense of insanity in compliance with section 20a, 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:~~ THAT THE DEFENDANT HAS ESTABLISHED HIS OR HER MENTAL ILLNESS BY A PREPONDERANCE OF THE EVIDENCE BUT HAS NOT ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT HE OR SHE LACKED THE SUBSTANTIAL CAPACITY EITHER TO APPRECIATE THE NATURE AND QUALITY OR THE WRONGFULNESS OF HIS OR HER CONDUCT OR TO CONFORM HIS OR HER CONDUCT TO THE REQUIREMENTS OF THE LAW.

1       ~~(a) That the defendant is guilty of an offense.~~

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

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

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

21       (3) If a defendant is found guilty but mentally ill or  
22 enters a plea to that effect which is accepted by the court, the  
23 court shall impose any sentence ~~which~~ THAT could be imposed  
24 ~~pursuant to~~ BY law upon a defendant who is convicted of the  
25 same offense. If the defendant is committed to the custody of  
26 the department of corrections, ~~he~~ THE DEFENDANT shall undergo  
27 further evaluation and be given such treatment as is

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

1 discharged and a comparable report on the condition of the  
2 defendant shall be filed with the board. If ~~he~~ THE DEFENDANT  
3 is placed on parole, ~~by the parole board, his~~ THE DEFENDANT'S  
4 treatment shall, upon recommendation of the treating facility, be  
5 made a condition of parole. ~~, and failure~~ FAILURE to continue  
6 treatment except by agreement with the designated facility and  
7 parole board ~~shall be a basis~~ IS GROUNDS for ~~the institution~~  
8 ~~of parole violation hearings~~ REVOCATION OF PAROLE.

9 (4) If a defendant who is found guilty but mentally ill is  
10 placed on probation under the jurisdiction of the sentencing  
11 court ~~pursuant to~~ AS PROVIDED BY law, the trial judge, upon  
12 recommendation of the center for forensic psychiatry, shall make  
13 treatment a condition of probation. Reports as specified by the  
14 trial judge shall be filed with the probation officer and the  
15 sentencing court. Failure to continue treatment, except by  
16 agreement with the treating agency and the sentencing court,  
17 ~~shall be a basis~~ IS GROUNDS for ~~the institution~~ REVOCATION of  
18 probation. ~~violation hearings.~~ The period of probation shall  
19 not be for less than 5 years and shall not be shortened without  
20 receipt and consideration of a forensic psychiatric report by the  
21 sentencing court. Treatment shall be provided by an agency of  
22 the department of ~~mental~~ COMMUNITY health ~~,~~ or, with the  
23 approval of the sentencing court and at individual expense, by  
24 private agencies, private physicians, or other mental health  
25 personnel. A psychiatric report shall be filed with the proba-  
26 tion officer and the sentencing court every 3 months during the  
27 period of probation. If a motion on a petition to discontinue

1 probation is made by the defendant, the probation officer shall  
2 request a report as specified from the center for forensic psy-  
3 chiatry or any other facility certified by department of ~~mental~~  
4 COMMUNITY health for the performance of forensic psychiatric  
5 evaluation.