



**House  
Legislative  
Analysis  
Section**

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## **INSANITY DEFENSE**

**Senate Bill 202 (Substitute H-1\*)  
First Analysis (3-3-94)**

**Sponsor: Senator Christopher D. Dingell  
Senate Committee: Judiciary  
House Committee: Judiciary**

### ***THE APPARENT PROBLEM:***

Under Michigan law, the insanity defense is based on the premise that a person is responsible for his or her acts because he or she has both cognitive and volitional capacity. Consequently, when an individual lacks either the ability to know the nature of an act or to know that it is wrong (cognition) or the ability to control conduct (volition), the person is excused from criminal liability. Essentially, people are presumed to be sane and the burden rests upon a defendant to raise the defense of insanity. When the defense claims insanity and presents evidence of insanity, the burden shifts to the prosecution to prove beyond a reasonable doubt that the accused was able both to appreciate the criminality of his or her conduct and to conform his or her conduct to the requirements of the law. A number of other states, however, place the burden of proof of insanity on the defense, and many believe that Michigan should do so, as well.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Code of Criminal Procedure to shift the burden of proof of insanity to the defendant, who would have to prove insanity by a preponderance of the evidence.

The bill also would refine the code's definition of insanity. Elements requiring a person either to be mentally ill or mentally retarded as defined by the Mental Health Code would be retained; however, the bill would provide that mental illness or being mentally retarded would not otherwise constitute a defense of legal insanity if the code's other criteria were not met. Those criteria demand that a person lack substantial capacity either to appreciate the "wrongfulness" of his or her conduct or to conform his or her conduct to the requirements of the law. The bill would in addition allow insanity to be proved if the person was unable to appreciate the "nature and quality" of his or her conduct or to conform it to the law's requirements.

The bill would take effect October 1, 1994.

MCL 768.21a

### ***HOUSE COMMITTEE ACTION:***

The House Judiciary Committee adopted a substitute that differed from the Senate-passed bill in allowing insanity to be proved by a preponderance of the evidence, rather than requiring clear and convincing evidence. In addition, the House committee version retains current language calling for a person to "lack substantial capacity" to appreciate his conduct and conform it to the law; the Senate version would instead have required that a person be "unable" to do so.

### ***FISCAL IMPLICATIONS:***

With regard to the Senate version of the bill, the Senate Fiscal Agency said that the bill would have no fiscal impact on state or local government. (2-19-93)

### ***ARGUMENTS:***

#### ***For:***

Currently, a defendant needs to present only slight evidence of insanity, even without expert testimony, for the burden of proof to shift to the prosecutor, who then must prove beyond a reasonable doubt that the defendant was sane. Faced with this heavy burden of proof, the prosecution usually will find it necessary to present expert testimony that the defendant was not insane, which can be both time-consuming and difficult. As a result, many defendants, already having been found to have perpetrated the criminal acts charged, are excused from any culpability for their behavior. By requiring a defendant to prove insanity, the bill would save the prosecution time, trouble, and

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expense, and make it less likely that guilty defendants would go free. Reportedly, about half the states require defendants to prove their insanity by a preponderance of the evidence; with the bill, Michigan would join them.

***Response:***

A defendant cannot just claim insanity and thereby force the prosecutor to prove that the defendant is sane. Under current statutory procedures, a person may use the insanity defense only after serving the prosecutor with adequate notice prior to trial, pretrial examination by psychiatric experts, a report of their findings, and the development of any rebuttal by the prosecution. Further, under Michigan case law, a person may proceed with an insanity defense only after calling expert witnesses.

***Against:***

Critics of the bill challenge various assertions made by its proponents. For example, it seems unlikely that the bill would save much court time or prosecutorial expense. A study of 49 counties in eight states across the country found that insanity defenses were raised in less than one percent of felony cases, and that of those, only about one-quarter successfully sustained the defense. However, according to reports of that study, most of those who plead insanity "do have serious mental problems and are not feigning mental illness to avoid prosecution." Thus, the bill will not save money by discouraging excessive use of the insanity defense, because the evidence is that the insanity defense is not used excessively. Neither will the bill save money by streamlining the process, because statutory procedures for pretrial notice and examination would still be in place, and, should the question of sanity be disputed, both defense and prosecution would still have to bring in expert witnesses to testify regarding the defendant's claimed insanity. The process would remain fundamentally unchanged in this respect.

The real result of the bill, many fear, will be to increase the number of mentally ill people in Michigan prisons (where mental health treatment is virtually unavailable), and to worsen a trend that started, many say, when deinstitutionalization proceeded without adequate community resources. Ironically, if underlying the bill are concerns that public protection demands that criminals be sent to prison, the bill may fall short in this regard, too: often, hospitalization for being criminally insane can last longer than incarceration for the offense committed.

***Response:***

Reportedly, the use of the insanity defense in New York dropped thirty percent after the burden was shifted there. Besides, according to some of its proponents, the real aim of the bill is not so much to save money as to improve the process by eliminating confusing and extraneous testimony. With the bill's shift in the burden of proof, the process would more closely parallel what a psychiatrist or forensic psychologist does when determining whether a person is sane: one starts with the presumption that the person is sane, and proceeds to collect information relevant to the question of mental illness. Finally, although hospitalization in a mental hospital can exceed the length of a prison term that might otherwise be imposed, such is not always the case.

***Against:***

Requiring a defendant to prove insanity would violate constitutional demands of due process of law and protections against self-incrimination. Shifting the burden to the defendant would be fundamentally unfair, since most individuals simply do not have the resources of the government at their disposal to carry the burden of proof. Further, the shift would undermine the presumption of innocence.

***Response:***

Although a defendant cannot be required to disprove an element of the offense charged, insanity does not involve an element of the offense. Rather, it may be viewed as an affirmative defense involving a question apart from whether it can be demonstrated that the accused is factually guilty of the offense. Further, state statutes commonly require defendants to sustain the burden of proof in claiming insanity, and federal statute, enacted after John Hinckley's attempted assassination of President Reagan, also places the burden with the defense; this structure further has been upheld by the U.S. Supreme Court. The bill would place no inappropriate or unconstitutional burdens on the defense.

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the bill. (3-1-94)

The Michigan Psychological Association supports the bill. (3-2-94)

**The Michigan Psychiatric Society is reviewing the bill and has no formal position at this time. (3-2-94)**

**The Michigan Council on Crime and Delinquency opposes the bill. (3-2-94)**

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