

**GUILTY BUT MENTALLY ILL:  
REVISE**

**House Bill 5298**  
**Sponsor: Rep. James Koetje**  
**Committee: Criminal Justice**

**Complete to 1-18-02**

**A SUMMARY OF HOUSE BILL 5298 AS INTRODUCED 10-18-01**

If a defendant offers a defense of insanity, he or she may be found “guilty but mentally ill” (GBMI) if the prosecution proves beyond a reasonable doubt that the defendant is guilty of an offense, that the defendant was mentally ill at the time of the commission of the offense, and that the defendant was not legally insane at the time of the commission of the offense.

House Bill 5298 would amend the Code of Criminal Procedure to instead specify that for a verdict of GBMI, a jury would have to find 1) the defendant is guilty beyond a reasonable doubt of an offense; 2) the defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of the offense; and 3) the defendant 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.

If a defendant waived a trial and entered a plea of GBMI, a judge could not accept the plea under the bill until the judge was satisfied that the defendant proved by a preponderance of the evidence that he or she was mentally ill at the time the offense was committed. As under current law, the judge would also have to examine any required reports prepared under Section 21a (affirmative defense for legal insanity) and also hold a hearing on the issue of the defendant’s mental illness.

Further, if treatment is made a condition of either parole or probation for a defendant found to be guilty but mentally ill, failure to receive treatment is currently grounds for the institution of parole or probation violation hearings. Instead, the bill would make failure to receive treatment grounds for revocation of parole or probation.

MCL 768.36

(Note: Under the affirmative defense that the defendant was legally insane (MCL 768.21a), the defense has the burden of proving the defense of insanity by a preponderance of the evidence. A person is “legally insane” if he or she meets criteria in the Mental Health Code for mental illness or mental retardation and lacks 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. Mental illness or mental retardation does not otherwise constitute a defense of legal insanity. Being under the influence of voluntarily consumed alcohol or controlled substances is not considered to meet the criteria for legal insanity solely because the person was under the influence of either substance.)

Analyst: S. Stutzky

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