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**SFA****BILL ANALYSIS**

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House Bill 5298 (as passed by the House)  
Sponsor: Representative James Koetje  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 4-10-02

### **CONTENT**

**The bill would amend Chapter VIII (Trials) of the Code of Criminal Procedure to revise the conditions for a verdict or plea of guilty but mentally ill. Under the bill, the defendant would have to prove by a preponderance of the evidence that he or she was mentally ill, and would have to have failed to establish by a preponderance of the evidence that he or she met the standard for legal insanity.** The bill would take effect on May 1, 2002.

Under Chapter VIII of the Code, if a defendant asserts a defense of insanity, he or she may be found guilty but mentally ill (GBMI) if, after trial, the trier of fact (the jury or, in the absence of a jury, the judge) finds all of the following beyond a reasonable doubt:

- The defendant is guilty of an offense.
- The defendant was mentally ill at the time he or she committed the offense.
- The defendant was not legally insane at the time he or she committed the offense.

The bill specifies, instead, that a defendant who asserted an insanity defense could be found GBMI if, after trial, the trier of fact found all of the following:

- The defendant was guilty of an offense beyond a reasonable doubt.
- The defendant had proven by a preponderance of the evidence that he or she was mentally ill at the time he or she committed the offense.
- The defendant had 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. (This is the standard for legal insanity.)

In addition, under the Code, if a defendant asserts an insanity defense and waives his or her right to trial, the judge, with the approval of the prosecuting attorney, may accept a plea of GBMI. The judge may not accept that plea, however, until he or she, with the defendant's consent, has examined the reports prepared in compliance with requirements for asserting an insanity defense, has held a hearing on the issue of the defendant's mental illness at which either party could present evidence, and is satisfied that the defendant was mentally ill at the time of the offense to which the plea is entered. Under the bill, the judge would have to be satisfied that the defendant had proven by a preponderance of the evidence that he or she was mentally ill at the time of the offense to which the plea was entered.

MCL 768.36

## **BACKGROUND**

Public Act 56 of 1994 amended Chapter VIII of the Code of Criminal Procedure to provide that a defendant has the burden of proving an insanity defense by a preponderance of the evidence; to revise the definition of "legally insane"; and to specify that it is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. (An affirmative defense is evidence that outweighs the evidence against the defense.)

Before Public Act 56 was enacted, a person was considered legally insane if, as a result of mental illness or mental retardation, the person lacked "substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law". Under the Public Act 56 revisions, a person is legally insane if, as a result of mental illness or being mentally retarded, as those terms are defined in the Mental Health Code, the person 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.

Also, before the 1994 amendments, when the defense of insanity was raised, the prosecutor had the burden of proving beyond a reasonable doubt that the accused was able to understand the wrongfulness of his or her conduct and to conform his conduct to the requirements of the law.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman