

# HOUSE BILL No. 5298

October 18, 2001, Introduced by Reps. Koetje, Raczkowski, Kooiman, Bishop, Ruth Johnson, Julian, Faunce, Shulman, Newell, Patterson, Vander Roest, Kuipers and Drolet and referred to the Committee on Criminal Justice.

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 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~~ THE defendant is guilty BEYOND A REASONABLE DOUBT of an offense.

(b) ~~That the~~ THE defendant HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE OR SHE was mentally ill at the time of the commission of that offense.

1           (c) ~~That the~~ THE defendant ~~was not legally insane at the~~  
2 ~~time of the commission of that offense~~ HAS NOT ESTABLISHED BY A  
3 PREPONDERANCE OF THE EVIDENCE THAT HE OR SHE LACKED THE SUBSTAN-  
4 TIAL CAPACITY EITHER TO APPRECIATE THE NATURE AND QUALITY OR THE  
5 WRONGFULNESS OF HIS OR HER CONDUCT OR TO CONFORM HIS OR HER CON-  
6 DUCT TO THE REQUIREMENTS OF THE LAW.

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

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

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

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

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

**HB5298, As Passed House, February 14, 2002**

HB 5298 as amended February 13, 2002 5

1 the period of probation. If a motion on a petition to  
2 discontinue probation is made by the defendant, the probation  
3 officer shall request a report as specified from the center for  
4 forensic psychiatry or any other facility certified by department  
5 of ~~mental~~ COMMUNITY health for the performance of forensic psy-  
6 chiatric evaluation.

[Enacting section 1. This amendatory act takes effect May 1,  
2002.]