

HOUSE BILL 612
By Ford S

AN ACT to amend Tennessee Code Annotated, Title 40, Chapters 18 and 35, to authorize the verdict of "guilty but mentally ill" in certain criminal cases and to provide the disposition of and a procedure for persons found guilty under such circumstances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-18-117, is amended by inserting the following language between the language "insanity," and the word "that"

"or guilty but mentally ill"

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 35, Part 2, is amended by adding the following as new sections:

Section 40-35-2___. In any criminal case in which the defendant asserts a defense of insanity, the defendant may be found "guilty but mentally ill" if the trier of fact finds beyond a reasonable doubt that:

- (1) The defendant is guilty of an offense;
- (2) At the time the offense was committed the defendant suffered from a severe mental disease or defect; and
- (3) The defendant, notwithstanding his mental condition at the time the offense was committed, was not legally insane.

Section 40-35-2___. If the defendant waives his right to trial, the trial judge, with the approval of the district attorney general, may accept a plea of guilty but mentally ill in

lieu of a plea of guilty or a plea of nolo contendere. The trial judge shall not accept a plea of guilty but mentally ill until after such judge has conducted a hearing on the issue of the defendant's mental illness. The state and the defendant may present evidence at such hearing, which shall include a psychiatric evaluation of the defendant. If the trial judge is satisfied that the defendant suffered from a severe mental disease or defect at the time the offense was committed, such judge may accept the plea of guilty.

Section 40-35-2___. A defendant found guilty but mentally ill may receive any sentence authorized by law for the offense for which the defendant was convicted. If the defendant is sentenced to a term of imprisonment, such defendant shall undergo further evaluation and shall be given such treatment as is psychiatrically indicated. Treatment may be provided by the department of correction or by the department of mental health and mental retardation under the provisions of Tennessee Code Annotated, Section 33-7-303. Except as provided in this act, the consequences of a conviction based upon a verdict or plea of guilty but mentally ill shall be the same as if the defendant's conviction was based upon a verdict or plea of guilty.

Section 40-35-2___. At least sixty (60) days prior to a treating facility designated by either the department of correction or the department of mental health and mental retardation discharging such a defendant prior to the expiration of the defendant's sentence, such treating facility shall transmit to the board of probation and parole a report on the condition of the defendant. Such report shall contain:

- (1) the clinical facts of the case;
- (2) the diagnosis;
- (3) the course of treatment;
- (4) the prognosis for the remission of symptoms;
- (5) the potential for recidivism and for the danger to the defendant or the public; and

(6) any recommendations regarding future outpatient or other type of treatment.

Upon receiving such a report, the board shall consult with the treating facility from which the defendant is being discharged concerning appropriate treatment, if any, that may be necessary or desirable if such defendant is granted parole. If after a hearing the parole board grants the defendant parole, upon the defendant's discharge from the facility, the defendant shall be placed on parole supervision until the expiration of such defendant's sentence and any treatment recommended by the facility may be made a condition of parole. Failure to continue treatment, except by agreement with the designated facility and parole board, shall be a basis for the institution of parole revocation proceedings.

If the parole board does not grant the defendant parole, upon discharge from the facility the defendant shall be transferred to the department of correction for service of the remainder of the defendant's sentence or until the defendant is granted parole, whichever occurs sooner.

Section 40-35-2___. If the offense committed by a person found guilty but mentally ill or whose plea of guilty but mentally ill is accepted by the court is one for which a suspended sentence and probation is authorized by law, the trial judge may not suspend such sentence until, pursuant to order of the court, the defendant has been detained in a hospital or treatment facility for diagnosis and evaluation for not less than sixty (60) nor more than ninety (90) days. If the trial judge thereafter suspends the sentence, such judge may make continued treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer and the court. Treatment shall be provided by the department of correction or the department of mental health and mental retardation or, with the approval of the trial court and at the defendant's expense, private agencies, physicians or other mental health personnel.

Failure to continue treatment, except by agreement with the treating agency and the court, shall be grounds for revocation of probation.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 1999, the public welfare requiring it and shall apply to defendants found guilty but mentally ill or who plead guilty but mentally ill on or after such date.