

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1162

Session of
1979

INTRODUCED BY MESSRS. D. M. FISHER, REED, PETERSON, SWEET,
PERZEL, VROON, LASHINGER, BURD, POTT, NOYE, MILLER,
MRS. SIRIANNI, MESSRS. CIMINI, MCINTYRE AND SIEMINSKI,
MAY 2, 1979

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 2, 1980

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for a plea or finding of
3 guilty but mentally ill.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 18, act of November 25, 1970 (P.L.707,
7 No.230), known as the Pennsylvania Consolidated Statutes, is
8 amended by adding sections to read:

9 § 314. Guilty but mentally ill.

10 (a) General rule.--A person who offers a defense of insanity
11 at trial may be found "guilty but mentally ill" if, after trial,
12 the trier of facts finds beyond a reasonable doubt that the
13 person is guilty of an offense, that the person was mentally ill
14 at the time of the commission of the offense and that the person
15 knew at the time of the commission of the offense the nature and
16 quality of his act and knew that what he was doing was wrong.

17 (b) Plea of guilty but mentally ill.--A person who waives

his right to trial may plead guilty but mentally ill. No plea of
guilty but mentally ill may be accepted by the trial judge until
he has examined all reports prepared pursuant to the Rules of
Criminal Procedure, has held a hearing on the sole issue of the
defendant's mental illness at which either party may present
evidence and is satisfied that the defendant was mentally ill at
the time of the offense to which the plea is entered. If the
trial judge refuses to accept a plea of guilty but mentally ill,
the defendant shall be permitted to withdraw his plea. A

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DEFENDANT WHOSE PLEA IS NOT ACCEPTED BY THE COURT SHALL BE
ENTITLED TO A JURY TRIAL, EXCEPT THAT IF A DEFENDANT
SUBSEQUENTLY WAIVES HIS RIGHT TO A JURY TRIAL, THE JUDGE WHO
PRESIDED AT THE HEARING ON MENTAL ILLNESS SHALL NOT PRESIDE AT
THE TRIAL.

(c) Definition.--For the purposes of this section AND
SECTION 1327 (RELATING TO DISPOSITION OF PERSONS FOUND GUILTY
BUT MENTALLY ILL), a person is "mentally ill" if, as a result of
mental disease or defect, he lacks substantial capacity either
to appreciate the wrongfulness of his conduct or to conform his
conduct to the requirements of the law.

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§ 1327. Disposition of persons found guilty but mentally ill.

(a) Imposition of sentence.--A defendant found guilty but
mentally ill or whose plea of guilty but mentally ill is
accepted under the provisions of section 314 (relating to guilty
but mentally ill) may have any sentence imposed on him which may
lawfully be imposed on any defendant convicted of the same
offense. BEFORE IMPOSING SENTENCE, THE COURT SHALL HEAR
TESTIMONY AND MAKE A FINDING ON THE ISSUE OF WHETHER THE
DEFENDANT IS MENTALLY ILL AT THE TIME OF SENTENCING.

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(b) Treatment.--

1 (1) An offender WHO IS FOUND TO BE MENTALLY ILL AT THE <—
2 TIME OF SENTENCING AND who is committed to the custody of the
3 Bureau of Correction or county jail shall undergo further
4 evaluation and be provided such treatment as is
5 psychiatrically or psychologically indicated for his mental
6 illness, except that he may, by written statement, refuse to
7 take such drugs as may be prescribed. Drugs may be forcibly
8 administered only in an emergency situation where required to
9 prevent death or serious bodily harm to any person. Treatment
10 may be provided by the Bureau of Correction, by the county or
11 by the Department of Public Welfare in accordance with the
12 act of July 9, 1976 (P.L.817, No.143), known as the "Mental
13 Health Procedures Act," which shall also govern his discharge
14 from any treating mental health facility and return to the
15 Bureau of Correction or county jail.

16 (2) Notwithstanding the provisions of section 401 401(A) <—
17 of the "Mental Health Procedures Act," defendants found
18 ~~guilty but mentally ill~~ TO BE MENTALLY ILL AT SENTENCING and <—
19 sentenced pursuant to this act CHAPTER may be transferred <—
20 from the Bureau of Correction or the county jail to the
21 Department of Public Welfare upon the certification of the
22 evaluating psychiatrist OR PSYCHOLOGIST that appropriate <—
23 mental health treatment facilities do not exist within the
24 transferring agency.

25 (3) THE COST FOR TREATMENT OF OFFENDERS FOUND GUILTY BUT <—
26 MENTALLY ILL, COMMITTED TO THE CUSTODY OF THE BUREAU OF
27 CORRECTION AND TRANSFERRED TO A MENTAL HEALTH FACILITY SHALL
28 BE BORNE BY THE COMMONWEALTH.

29 (c) Discharge report.--When a treating facility designated
30 by either the Department of Justice or the Department of Public

Welfare discharges such a defendant from treatment prior to the expiration of his maximum sentence, that treating facility shall transmit to the Pennsylvania Board of Probation and Parole, the correctional facility or county jail to which the offender is being returned, and the sentencing judge a report on the condition of the offender, together with the reasons for its judgments, which describes:

(1) The defendant's behavior.

(2) The course of treatment.

(3) The potential for recurrence of the behavior.

(4) The potential for danger to himself or the public.

(5) Recommendations for future treatment, prerelease status, and parole.

(d) Prerelease and parole CONDITIONS.--An offender who is discharged from treatment may be placed on prerelease or parole status under the same terms AND LAWS applicable to any other offender. Psychological and psychiatric counseling and treatment may be required as a condition of such status. Failure to continue treatment, except by agreement of the treating facility and, in the case of paroled offenders, the Board of Probation and Parole or sentencing judge, SUPERVISING AUTHORITY, shall be a basis for terminating prerelease status or instituting parole violation hearings.

(e) Parole PROCEDURE.--If the report of the treating facility recommends parole, the Pennsylvania Board of Probation and Parole or judge shall consider the offender for parole within 90 days after receipt of the report. If the report does not recommend parole, the board or judge may consider the offender for parole pursuant to other law or administrative rules. Nothing in this subsection shall require that an offender

~~who has not completed his minimum sentence be considered for
parole prior to that time. When the board or judge considers the
offender for parole, the board or judge shall consult with the
treating facility at which the defendant is being treated or
from which he was discharged. If no report has been filed with
the board or judge, or more than 180 days has elapsed since the
offender's discharge from the treating facility, a report like
that required in subsection (c) shall be filed.~~ RECOMMENDS
PAROLE, THE PAROLING AUTHORITY SHALL CONSIDER THE OFFENDER FOR
PAROLE WITHIN 45 DAYS OR AT THE EXPIRATION OF HIS MINIMUM
SENTENCE, WHICHEVER IS LATER. IF THE REPORT DOES NOT RECOMMEND
PAROLE, THE PAROLING AUTHORITY MAY CONSIDER THE OFFENDER FOR
PAROLE PURSUANT TO OTHER LAW OR ADMINISTRATIVE RULES. WHEN THE
PAROLING AUTHORITY CONSIDERS THE OFFENDER FOR PAROLE, IT SHALL
CONSULT WITH THE TREATING FACILITY AT WHICH THE OFFENDER IS
BEING TREATED OR FROM WHICH HE WAS DISCHARGED.

(f) Probation.--

(1) If an offender who is found guilty but mentally ill
is placed on probation, the judge, upon recommendation of the
district attorney, shall make treatment a condition of
probation.

(2) Reports as specified by the trial judge shall be
filed with the probation officer and the sentencing court.
Failure to continue treatment, including the refusal to take
such drugs as may be prescribed, except by agreement of the
sentencing court shall be a basis for the institution of
parole PROBATION violation hearings. The period of probation
shall not be less than five years BE THE MAXIMUM PERMITTED BY
LAW and shall not be reduced without receipt and
consideration by the court of a psychiatric report like that

1 required in subsection (c).

2 (3) Treatment shall be provided by an agency of the
3 Department of Public Welfare or, with the approval of the
4 sentencing court and at individual expense, by private
5 agencies, private physicians or other mental health
6 personnel. A psychiatric report shall be filed with the
7 probation officer and the sentencing court every three months
8 during the period of probation. If a motion on a petition to
9 discontinue probation is made by the defendant, the probation
10 officer shall request a report as specified from the treating
11 facility.

12 Section 2. The act of July 9, 1976 (P.L.817, No.143), known
13 as the "Mental Health Procedures Act," is repealed insofar as
14 inconsistent with the provisions of 18 Pa.C.S. §§ 314 and 1327.

15 Section 3. This act shall take effect in 60 days.