

No. 1982-286

## AN ACT

SB 171

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for a plea or finding of guilty but mentally ill and providing for the disposition of persons found guilty but mentally ill and further providing for the defense of insanity.

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

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

**§ 314. Guilty but mentally ill.**

*(a) General rule.—A person who timely offers a defense of insanity in accordance with the Rules of Criminal Procedure may be found “guilty but mentally ill” at trial if the trier of facts finds, beyond a reasonable doubt, that the person is guilty of an offense, was mentally ill at the time of the commission of the offense and was not legally insane at the time of the commission of the offense.*

*(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 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) Definitions.—For the purposes of this section and 42 Pa.C.S. § 9727 (relating to disposition of persons found guilty but mentally ill):*

*(1) “Mentally ill.” One who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.*

*(2) “Legal insanity.” At the time of the commission of the act, the defendant was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know he was doing what was wrong.*

*(d) Common law M'Naghten's Rule preserved.—Nothing in this section shall be deemed to repeal or otherwise abrogate the common-law defense of insanity (M'Naghten's Rule) in effect in this Commonwealth on the effective date of this section.*

**§ 315. Insanity.**

*(a) General rule.—The mental soundness of an actor engaged in conduct charged to constitute an offense shall only be a defense to the charged offense when the actor proves by a preponderance of evidence that the actor was legally insane at the time of the commission of the offense.*

*(b) Definition.—For purposes of this section, the phrase “legally insane” means that, at the time of the commission of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong.*

Section 2. Title 42 is amended by adding a section to read:  
**§ 9727. 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 18 Pa.C.S. § 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 at the time of sentencing is severely mentally disabled and in need of treatment pursuant to the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the “Mental Health Procedures Act.”*

*(b) Treatment.—*

*(1) An offender who is severely mentally disabled and in need of treatment at the time of sentencing shall, consistent with available resources, be provided such treatment as is psychiatrically or psychologically indicated for his mental illness. Treatment may be provided by the Bureau of Correction, by the county or by the Department of Public Welfare in accordance with the “Mental Health Procedures Act.”*

*(2) The cost for treatment of offenders found guilty but mentally ill, committed to the custody of the Bureau of Correction and transferred to a mental health facility, shall be borne by the Commonwealth.*

*(c) Discharge report.—When a treating facility designated by either the Bureau of Correction 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.*

*(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 supervising authority, shall be a basis for terminating prerelease status or instituting parole violation hearings.*

*(e) Parole procedure.—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 court may, upon recommendation of the district attorney or upon its own initiative, 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 probation violation hearings. The period of probation shall be the maximum permitted by law and shall not be reduced without receipt and consideration by the court of a mental health status report like that required in subsection (c).*

*(3) Treatment shall be provided by an agency approved by the Department of Public Welfare or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians or other mental health personnel. A mental health status report, containing the information set forth in subsection (c), shall be filed with the probation officer and the sentencing court every three months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the treating facility.*

Section 3. The provisions of this act shall be severable. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or

unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. This act shall apply to all indictments or informations filed on or after the effective date of this act.

Section 5. This act shall take effect in 90 days.

APPROVED—The 15th day of December, A. D. 1982.

**DICK THORNBURGH**