

SENATE BILL 1687

By Walley

AN ACT to amend Tennessee Code Annotated, Title 33; Title 37; Title 39; Title 40 and Title 41, relative to mental illness.

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

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 11, Part 5, is amended by adding the following new sections:

**39-11-506.**

(a) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, the defendant had the ability to appreciate the nature or wrongfulness of the defendant's acts, but because of mental disease or defect the defendant lacked sufficient capacity to conform the defendant's conduct to the requirements of the law.

(b) To return a verdict of guilty but mentally ill, the burden of proof is upon the state to prove beyond a reasonable doubt to the trier of fact that the defendant committed the offense, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when the defendant committed the offense the defendant was mentally ill as required by subsection (a).

(c) The verdict of guilty but mentally ill may be rendered only during the phase of a trial that determines guilt or innocence and must not be rendered during sentencing.

(d) A court shall not accept a plea of guilty but mentally ill unless, after a hearing on the matter, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when the defendant committed the offense the defendant was mentally ill as required by subsection (a).

**39-11-507.**

(a) In a prosecution for an offense when the affirmative defense of insanity under § 39-11-501 is raised sufficiently by the defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, the trier of fact shall find under the applicable law, and the verdict must so state, whether the defendant is:

- (1) Guilty;
- (2) Not guilty;
- (3) Not guilty by reason of insanity; or
- (4) Guilty but mentally ill.

(b) If a verdict is returned of guilty but mentally ill, then the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty; provided, however:

(1) If the sentence imposed upon the defendant includes the incarceration of the defendant, then the defendant must first be taken to a forensic services unit designated by the commissioner of mental health and substance abuse services for treatment and retained there until:

(A) In the opinion of the chief officer of the forensic services unit the defendant may safely be moved to a correctional facility to serve the remainder of the defendant's sentence; or

(B) The expiration of the defendant's sentence; and

(2) If the sentence includes a period of probation, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

(c)

(1) If a defendant is released pursuant to subdivision (b)(2), then the district attorney general shall immediately notify the applicable probation office, which shall monitor compliance by the defendant of the terms and conditions of release.

(2) The defendant's probation officer shall file quarterly reports of the defendant's compliance with the terms of release with the district attorney general, trial court, defendant's attorney, and defendant.

(3) If the defendant violates any of the terms of release, then the probation officer must immediately notify the trial court, district attorney general, defendant's attorney, and defendant. Upon the receipt of the notice, the trial court, upon notice to all parties, may hold a hearing to determine whether the defendant meets the standard for judicial commitment under title 33, chapter 6, part 5 or order such other action as the court may deem appropriate.

SECTION 2. This act takes effect July 1, 2024, the public welfare requiring it, and applies to offenses committed on or after that date.