

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1093

Short Title: Guilty But Mentally Ill.

(Public)

Sponsors: Senators McDaniel and Ballantine.

Referred to: Judiciary I/Constitution

May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE DEFENSE OF NOT GUILTY BY REASON OF
INSANITY AND TO ESTABLISH THE SENTENCE OF GUILTY BUT
MENTALLY ILL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 2C.
"INSANITY.

"§ 14-7.20. Presumption of sanity; defense of insanity; guilty but mentally ill.

(a) Presumption. – The law presumes that every person is sane. The presumption
may be rebutted by the defendant upon proof to the satisfaction of the jury.

(b) Insanity Defense. – It is a defense to a criminal charge that at the time of the
offense, as a result of mental disease or defect, the defendant:

(1) Did not know the nature and quality of the defendant's act; or

(2) Did not know that the act was wrong.

(c) Guilty But Mentally Ill. – If the jury finds that the defendant committed the
offense but that at the time of the offense the defendant, although aware of the nature and
quality of the defendant's act and that the act was wrong, lacked, as a result of mental

1 disease or defect, substantial capacity to conform his or her conduct to the requirements
2 of law, the jury must return a verdict of 'guilty but mentally ill'.

3 (d) Exclusion. – As used in this Article, the terms 'mental disease or defect' do not
4 include an abnormality manifested only by repeated criminal or otherwise antisocial
5 conduct.

6 (e) Disposition Upon a Finding of 'Guilty But Mentally Ill'. – If the jury returns a
7 verdict of 'guilty but mentally ill', the judge must impose judgment pursuant to Article
8 81B of Chapter 15A of the General Statutes."

9 Sec. 2. G.S. 15A-959 reads as rewritten:

10 "**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity; insanity;**
11 **expert testimony on a mental condition.**

12 (a) If a defendant intends to raise the defense of insanity, he must within the time
13 provided for the filing of pretrial motions under G.S. 15A-952 file a notice of his
14 intention to rely on the defense of insanity. The court may for cause shown allow late
15 filing of the notice or grant additional time to the parties to prepare for trial or make other
16 appropriate orders.

17 (b) If a defendant intends to introduce expert testimony relating to a mental
18 disease, defect, or other condition bearing upon the issue of whether he had the mental
19 state required for the offense charged, he must within the time provided for the filing of
20 pretrial motions under G.S. 15A-952(b) file a notice of that intention. The court may for
21 cause shown allow late filing of the notice or grant additional time to the parties to
22 prepare for trial or make other appropriate orders.

23 ~~(e) Upon motion of the defendant and with the consent of the State the court may~~
24 ~~conduct a hearing prior to the trial with regard to the defense of insanity at the time of~~
25 ~~the offense. If the court determines that the defendant has a valid defense of insanity with~~
26 ~~regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a~~
27 ~~finding to that effect. The court's denial of relief under this subsection is without~~
28 ~~prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no~~
29 ~~reference to the hearing may be made at the trial, and recorded testimony or evidence~~
30 ~~taken at the hearing is not admissible as evidence at the trial."~~

31 Sec. 3. Chapter 15A of the General Statutes is amended by adding a new
32 Article 79 as follows:

33 **"ARTICLE 79.**

34 **"DEFENDANTS FOUND GUILTY BUT MENTALLY ILL.**

35 **"§ 15A-1311. Sentence of defendant found guilty but mentally ill.**

36 When a defendant is found guilty but mentally ill, the judge shall impose sentence as
37 upon a guilty verdict pursuant to Article 81B of Chapter 14 of the General Statutes. If a
38 term of imprisonment is imposed, the judge shall determine whether the defendant is
39 presently suffering from a recognized mental disease or defect. If the judge finds that the
40 defendant is suffering from a recognized mental disease or defect, initial commitment of
41 the defendant shall be to a residential State mental health facility.

42 **"§ 15A-1312. Presentence psychiatric evaluation.**

1 (a) Requirement. – Unless evidence presented during the adjudication process
2 satisfies the judge that the defendant is presently suffering from a recognized mental
3 disease or defect, when a defendant charged with a crime is found guilty but mentally ill,
4 a presentence report containing a written psychiatric evaluation of the defendant shall be
5 made. The evaluation shall satisfy all of the following conditions:

6 (1) It shall be conducted, as determined by the judge:

7 a. In a local mental health facility, either public or private;

8 b. In a State mental health facility, either on an inpatient or an
9 outpatient basis; or

10 c. Pursuant to G.S. 15A-1332(c).

11 (2) It shall be completed within 90 days of conviction.

12 (3) It shall determine whether the defendant has a recognized mental
13 disease or defect and shall make a recommendation as to treatment.

14 (b) Release Pending Evaluation. – A defendant who has been found guilty but
15 mentally ill and whose psychiatric evaluation is authorized to be made on an outpatient
16 basis may be released from custody pending sentence, pursuant to G.S. 15A-535. In
17 addition to any other authorized conditions of release, the judge may require that the
18 defendant cooperate in the presentence evaluation.

19 **"§ 15A-1313. Release from mental health facility.**

20 (a) Recovery. – If at any time the chief of medical services of a State mental health
21 facility determines that a person found guilty but mentally ill and committed to the
22 facility is no longer suffering from a mental disease or defect, and the term of the
23 defendant's imprisonment has not expired, the director of the facility shall file a notice
24 with the clerk of the county in which the defendant was convicted and have it served
25 upon the district attorney for that county. The defendant shall not be released or released
26 on probation until, as a result of the defendant's sentence, the defendant has been in
27 custody for the minimum period of confinement that may be required by law for the
28 offense. The district attorney shall schedule a hearing before a judge of the court in
29 which the defendant was sentenced, within 30 days from service of the notice, to
30 determine whether the defendant should be released, released on probation, or continued
31 in the mental health facility, or the defendant's custody shall be transferred to the
32 Department of Correction. If the defendant is released on probation, any unserved term
33 of the defendant's imprisonment will be suspended during the period of probation, and
34 the provisions of Chapter 15A, Article 82, Probation, apply. The hearing may be held
35 anywhere within the judicial district encompassing the county in which the defendant was
36 convicted. At the hearing:

37 (1) The court may consider relevant portions of the trial transcript;

38 (2) The defendant is entitled to be represented by counsel and, if indigent,
39 to have counsel assigned by the court; and

40 (3) The defendant may put on evidence of the defendant's mental condition.

41 To prepare for the hearing, a defendant who wishes to have his or her condition evaluated
42 by mental health professionals of the defendant's choice shall be made accessible at the

1 mental health facility to those professionals. The defendant has a right to one
2 continuance of the hearing for a period not to exceed 30 days.

3 (b) Completion of Sentence. – Fifteen days before the end of the term of
4 imprisonment of a person found guilty but mentally ill and committed to a State mental
5 health facility, if the defendant has not been released or transferred pursuant to subsection
6 (a) of this section, the chief of medical services of the State mental health facility shall
7 notify the clerk of the county in which the facility is located of the defendant's impending
8 release. The clerk shall schedule a hearing as provided in G.S. 122C-276 for rehearings,
9 to determine whether the defendant should be involuntarily committed pursuant to Article
10 5 of Chapter 122C of the General Statutes. In addition to notice required by G.S. 122C-
11 276, the clerk shall notify the clerk and the district attorney in the county in which the
12 defendant was convicted of the time and place of the hearing."

13 Sec. 4. G.S. 122C-269 reads as rewritten:

14 **"§ 122C-269. Venue of district court hearing when respondent held at a 24-hour**
15 **facility pending hearing.**

16 (a) In all cases where the respondent is held at a 24-hour facility pending hearing
17 as provided in G.S. 122C-268, ~~G.S. 122C-268.1, 122C-276.1, 122C-268~~ or G.S. 122C-
18 277(b1), unless the respondent through counsel objects to the venue, the hearing shall be
19 held in the county in which the facility is located. Upon objection to venue, the hearing
20 shall be held in the county where the petition was initiated, except as otherwise provided
21 in subsection (c) of this section.

22 (b) An official of the facility shall immediately notify the clerk of superior court of
23 the county in which the facility is located of a determination to hold the respondent
24 pending hearing. That clerk shall request transmittal of all documents pertinent to the
25 proceedings from the clerk of superior court where the proceedings were initiated. The
26 requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk
27 shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-
28 268(d).

29 (c) Upon motion of any interested person, the venue of an initial hearing described
30 in G.S. 122C-268(c) ~~or G.S. 122C-268.1~~ or a rehearing required by G.S. 122C-276(b),
31 ~~G.S. 122C-276.1,~~ or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county
32 in which the respondent was found ~~not guilty by reason of insanity or incapable of~~
33 ~~proceeding~~ when the convenience of witnesses and the ends of justice would be promoted
34 by the change."

35 Sec. 5. Article 80 of Chapter 15A of the General Statutes, G.S. 122C-268.1,
36 122C-271(c), and 122C-276.1 are repealed.

37 Sec. 6. This act becomes effective December 1, 1995, and applies to offenses
38 committed on or after that date.