

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 57

Short Title: Guilty but Mentally Ill.

(Public)

---

Sponsors: Senators McDaniel, Ballantine; Allran and East.

---

Referred to: Judiciary.

---

February 6, 1997

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 2D.**  
**"INSANITY.**

**"§ 14-7.30. 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 shall 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 shall impose judgment pursuant to Article  
8 81B of Chapter 15A of the General Statutes."

9 Section 2. Chapter 14 of the General Statutes is amended by adding a new  
10 section to read:

11 **"§ 14-17.2. Guilty but mentally ill defined.**

12 (a) If a defendant charged with murder in the first degree asserts the defense of  
13 insanity, the trier of fact shall find the defendant guilty but mentally ill if:

14 (1) The State proves beyond a reasonable doubt the elements of murder in  
15 the first degree;

16 (2) The defendant fails to prove to the jury's satisfaction that defendant was  
17 insane; and

18 (3) The defendant proves to the jury's satisfaction that he or she, at the time  
19 of the offense, had a mental disease or defect that substantially impaired  
20 defendant's ability to conform his or her conduct to the requirements of  
21 law.

22 (b) 'Mental disease or defect.' – As used in this section, the term does not include  
23 the following:

24 (1) An abnormality manifested only by repeated criminal or otherwise  
25 antisocial conduct.

26 (2) Behavior manifested only as a result of voluntary intoxication."

27 Section 3. G.S. 15A-959 reads as rewritten:

28 **"§ 15A-959. Notice of defense of insanity; ~~pretrial determination of insanity;~~ insanity;**  
29 **expert testimony on a mental condition.**

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

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

41 ~~(e) Upon motion of the defendant and with the consent of the State the court may~~  
42 ~~conduct a hearing prior to the trial with regard to the defense of insanity at the time of~~  
43 ~~the offense. If the court determines that the defendant has a valid defense of insanity with~~

1 regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a  
2 finding to that effect. The court's denial of relief under this subsection is without  
3 prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no  
4 reference to the hearing may be made at the trial, and recorded testimony or evidence  
5 taken at the hearing is not admissible as evidence at the trial."

6 Section 4. Chapter 15A of the General Statutes is amended by adding a new  
7 Article 79 as follows:

8 **"ARTICLE 79.**

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

10  
11 **"§ 15A-1311. Sentence of defendant found guilty but mentally ill.**

12 When a defendant is found guilty but mentally ill, the judge shall impose sentence as  
13 upon a guilty verdict pursuant to Article 81B of Chapter 15A of the General Statutes and  
14 shall determine whether the defendant is presently suffering from a recognized mental  
15 disease or defect. If the judge finds that the defendant is suffering from a recognized  
16 mental disease or defect, and the defendant is sentenced to active punishment, then initial  
17 commitment of the defendant shall be to a residential State mental health facility. If the  
18 judge finds that the defendant is suffering from a recognized mental disease or defect,  
19 and the defendant is sentenced to intermediate or community punishment, then the  
20 defendant may be committed to a residential State mental health facility if the  
21 presentence psychiatric evaluation recommends treatment on an inpatient basis.

22 **"§ 15A-1312. Presentence psychiatric evaluation.**

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

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

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

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

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

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

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

36 (b) Release Pending Evaluation. – A defendant who has been found guilty but  
37 mentally ill and whose psychiatric evaluation is authorized to be made on an outpatient  
38 basis may be released from custody pending sentence, pursuant to G.S. 15A-536. In  
39 addition to any other authorized conditions of release, the judge may require that the  
40 defendant cooperate in the presentence evaluation.

41 **"§ 15A-1313. Release from mental health facility.**

42 (a) Recovery. – If at any time the chief of medical services of a State mental health  
43 facility determines that a person found guilty but mentally ill and committed to the

1 facility is no longer suffering from a mental disease or defect, and the term of the  
2 defendant's imprisonment has not expired, the director of the facility shall file a notice  
3 with the clerk of the county in which the defendant was convicted and have it served  
4 upon the district attorney for that county. The defendant shall not be released or released  
5 on probation until, as a result of the defendant's sentence, the defendant has been in  
6 custody for the minimum period of confinement that may be required by law for the  
7 offense. The district attorney shall schedule a hearing before a judge of the court in  
8 which the defendant was sentenced, within 30 days from service of the notice, to  
9 determine whether the defendant should be released, released on probation, or continued  
10 in the mental health facility, or the defendant's custody shall be transferred to the  
11 Department of Correction. If the defendant is released on probation, any unserved term  
12 of the defendant's imprisonment will be suspended during the period of probation, and  
13 the provisions of Chapter 15A, Article 82, Probation, apply. The hearing may be held  
14 anywhere within the judicial district encompassing the county in which the defendant was  
15 convicted. At the hearing:

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

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

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

20 To prepare for the hearing, a defendant who wishes to have his or her condition evaluated  
21 by mental health professionals of the defendant's choice shall be made accessible at the  
22 mental health facility to those professionals. The defendant has a right to one  
23 continuance of the hearing for a period not to exceed 30 days.

24 (b) Completion of Sentence. – Fifteen days before the end of the term of  
25 imprisonment of a person found guilty but mentally ill and committed to a State mental  
26 health facility, if the defendant has not been released or transferred pursuant to subsection  
27 (a) of this section, the chief of medical services of the State mental health facility shall  
28 notify the clerk of the county in which the facility is located of the defendant's impending  
29 release. The clerk shall schedule a hearing as provided in G.S. 122C-276 for rehearings,  
30 to determine whether the defendant should be involuntarily committed pursuant to Article  
31 5 of Chapter 122C of the General Statutes. In addition to notice required by G.S. 122C-  
32 276, the clerk shall notify the clerk and the district attorney in the county in which the  
33 defendant was convicted of the time and place of the hearing."

34 Section 5. Chapter 14 of the General Statutes is amended by adding a new  
35 Article to read as follows:

36 **"ARTICLE 80A.**

37 **"TREATMENT FOR DEFENDANTS FOUND GUILTY BUT INSANE.**

38  
39 **"§ 15A-1323. Treatment for defendants found guilty but mentally ill.**

40 When a defendant charged with a crime is found guilty but mentally ill under G.S. 14-  
41 17.2, the presiding judge shall include in the written commitment order, in addition to  
42 that information required by G.S. 15A-1301, an order that defendant receive a mental  
43 health evaluation arranged for or provided by the Department of Correction. The

1 Department of Correction shall make available to defendant during the period of  
2 imprisonment any treatment consistent with the recommendations and findings of the  
3 mental health evaluation. The order of the commitment shall require that, before  
4 defendant may be released from a term of imprisonment, the Department of Correction  
5 must evaluate defendant's mental condition and prepare a suitable community-based  
6 treatment plan for implementation upon defendant's release. The treatment plan shall be  
7 prepared jointly by the Department of Correction and the area mental health,  
8 developmental disabilities, and substance abuse authority serving the geographical area  
9 where defendant plans to reside. The treatment plan shall be specifically designed to  
10 facilitate the return of the defendant to the community as a functioning, self-supporting  
11 citizen, and may include intensive supervision, day reporting, monitored medications, and  
12 appropriate supportive provisions for assistance in establishing residency, securing  
13 gainful employment, undergoing needed vocational rehabilitation, and such other  
14 outpatient services that appear beneficial."

15 Section 6. G.S. 122C-269 reads as rewritten:

16 "**§ 122C-269. Venue of district court hearing when respondent held at a 24-hour**  
17 **facility pending hearing.**

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

24 (b) An official of the facility shall immediately notify the clerk of superior court of  
25 the county in which the facility is located of a determination to hold the respondent  
26 pending hearing. That clerk shall request transmittal of all documents pertinent to the  
27 proceedings from the clerk of superior court where the proceedings were initiated. The  
28 requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk  
29 shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-  
30 268(d).

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

37 Section 7. Article 80 of Chapter 15A of the General Statutes, G.S. 122C-  
38 268.1, 122C-271(c), and 122C-276.1 are repealed.

39 Section 8. This act becomes effective December 1, 1997, and applies to  
40 offenses committed on or after that date.