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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/10
SPONSOR Wirth LAST UPDATED _____ HB _____
SHORT TITLE Repeal "Guilty But Mentally Ill" Plea SB 216
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1.0-\$5.0			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Corrections Department (CD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 216 repeals and abolishes the "guilty but mentally ill" verdict contained in sections 31-9-3 and 31-9-4.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. If the plea and verdict of guilty but mentally ill is eliminated it is conceivable that defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, court room availability and jury fees.

The AOC states that their data indicates that this plea or verdict is almost never used. AOC provided the following:

In 2005 it was used three times

In 2006 it was used once

In 2007 it was not used at all

In 2008 it was not used at all

SIGNIFICANT ISSUES

The guilty but mentally ill verdict was created in 1982. The verdict is to be considered when a defendant pleads not guilty by reason of insanity, or was clearly suffering from a mental illness at the time of the offense, but such mental illness does not rise to the level of insanity so as to justify a verdict of not guilty by reason of insanity.

If a defendant is found guilty but mentally ill, the penalties are the same as they are for a regular guilty finding, but if the defendant is sentenced to prison, CD must provide psychiatric, psychological and other counseling and treatment for the defendant as CD deems necessary.

The AODA questions what the effect of repeal of guilty but mentally ill will be. It is possible more defendants will be acquitted by reason of insanity. Jurors have a very hard time reaching that result, but without the guilty but mentally ill verdict, they may feel that it is the only way to acknowledge mental problems the defendant may have, and treatment the defendant may need, even though the mental issues may not rise to the legal level of insanity.

The AODA notes once a defendant is found not guilty by reason of insanity, they are free to walk out the door of the criminal justice system. Some may be civilly committed, but there is no certainty of that. This is particularly troublesome in very serious cases--such as murder or rape. Although the verdict is seldom-used, it does serve a purpose and have a niche in the criminal justice system for the relatively small number of cases in which it is appropriate for consideration.

PDD provided the following

A jury may return a verdict of guilty, a not guilty verdict, or a guilty but mentally ill (GBMI) verdict. A person who is found GBMI is sentenced to the same term of imprisonment under the same conditions as any other guilty inmate. The GBMI verdict does not mean that the defendant is entitled to treatment nor does it mean that a defendant will receive a lesser sentence, as its name suggests.

Unfortunately, juries are not told this. The present scheme merely confuses jurors with an essentially false option. When the “not guilty by reason of insanity” and “guilty but mentally ill verdicts” are submitted to the jury without explanation of the consequences of the two verdicts, the guilty but mentally ill verdict is so much more appealing that it is a foregone conclusion. The jury will believe that the guilty but mentally ill verdict differs from a guilty verdict and will protect society by keeping the defendant incarcerated while providing treatment, most likely in a hospital, whereas the not guilty by reason of insanity verdict will result in outright freedom.

Consequently, juries often believe that entering a GBMI verdict will result in more humane treatment for a mentally ill defendant and consider that "fact" when they are determining guilt or innocence. Eliminating the GBMI option will mean that juries will determine guilt or innocence of a mentally ill person just as it will any other defendant. It is important to note that the GBMI verdict has nothing to do with a jury finding that a defendant is not guilty by reason of insanity. That verdict is an acquittal based on proof that the defendant was so clinically insane at the time of the commission of the crime that he was incapable of knowing what he was doing and was incapable of controlling his

impulse. This is an extremely high standard and "insanity" verdicts are extremely rare. If a person is acquitted on that basis, he is generally found to be "dangerous to himself or others" and is civilly committed to a hospital. If this bill were enacted, attorneys will have two options rather than three for the jury to consider – guilty or not guilty by reason of insanity. This will simplify jury instructions and remove a verdict that has no real implications that differentiate it from a simple guilty verdict.

CD notes the GBMI statutes requires them to provide mental health treatment as it deems necessary to all GBMI convicted offenders sent to its custody. However, even without the GBMI option, CD will continue its constitutional duty to screen, evaluate and treat all offenders sent to its custody as it deems necessary. Whether or not this bill passes, CD will continue to screen, evaluate and treat all of its offenders as it deems necessary.

CD indicates they been criticized for its alleged failure to provide mental health treatment for these GBMI offenders. CD states they make every effort to provide quality mental health treatment to all of its inmates who need it. However, it must be remembered that that some inmates including GBMI offenders improve from their in-prison mental health treatment programs to the point that they no longer need constant or daily mental health treatment while in prison. Competent inmates have the right to refuse to take psychotropic and other medications. CD routinely seeks the appointment of a treatment guardian for its inmates pursuant to New Mexico statutory law who appear incompetent to make informed treatment decisions about their treatment and medications. The courts often, but do not always, find the inmate incompetent and appoint a treatment guardian.

ADMINISTRATIVE IMPLICATIONS

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

DW/svb