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HOUSE BILL 498

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR THE PLEA AND
VERDICT OF GUILTY BUT MENTALLY ILL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 31, Article 9 NMSA
1978 is enacted to read:

"[NEW MATERIAL] CRIMINAL TRIALS--PLEA AND VERDICT OF
GUILTY BUT MENTALLY ILL.--

A. A person who at the time of the commission of a
criminal offense was not insane but was suffering from a mental
illness is not relieved of criminal responsibility for the
person's conduct and may be found guilty but mentally ill. As
used in this section, "mentally ill" means a substantial
disorder of thought, mood or behavior that afflicted a person
at the time of the commission of the offense and that impaired

1 that person's judgment but not to the extent that the person
2 did not know what the person was doing, did not understand the
3 consequences of the act, did not know that the act was wrong or
4 could not prevent committing the act.

5 B. A plea or finding of guilty but mentally ill is
6 not an affirmative defense but an alternative plea or finding
7 that may be accepted or made pursuant to appropriate evidence
8 when the affirmative defense of insanity is raised or the plea
9 of guilty but mentally ill is made.

10 C. A plea of guilty but mentally ill shall not be
11 accepted until the defendant has undergone examination by a
12 clinical psychologist or psychiatrist and the court has
13 examined the psychological or psychiatric reports, held a
14 hearing on the issue of the defendant's mental condition and is
15 satisfied that there is a factual basis that the defendant was
16 mentally ill at the time of the offense to which the plea is
17 entered.

18 D. When a defendant has asserted a defense of
19 insanity, the court may find the defendant guilty but mentally
20 ill if, after hearing all of the evidence, the court finds
21 beyond a reasonable doubt that the defendant:

- 22 (1) is guilty of the offense charged;
23 (2) was mentally ill at the time of the
24 commission of the offense; and
25 (3) was not legally insane at the time of the

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1 commission of the offense.

2 E. When a defendant has asserted a defense of
3 insanity, the court, where warranted by the evidence, shall
4 provide the jury with a special verdict form of guilty but
5 mentally ill and shall separately instruct the jury that a
6 verdict of guilty but mentally ill may be returned instead of a
7 verdict of guilty or not guilty, and that such a verdict
8 requires a finding by the jury beyond a reasonable doubt that
9 the defendant committed the offense charged and that the
10 defendant was not legally insane at the time of the commission
11 of the offense but that the defendant was mentally ill at that
12 time."

13 SECTION 2. A new section of Chapter 31, Article 9 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] SENTENCE UPON ACCEPTED PLEA OR VERDICT OF
16 GUILTY BUT MENTALLY ILL.--The court may impose any sentence
17 upon a defendant that could be imposed pursuant to law upon a
18 defendant who has been convicted of the same offense without a
19 finding of mental illness; provided that, if a defendant is
20 sentenced to the custody of the corrections department, the
21 department shall examine the nature, extent, continuance and
22 treatment of the defendant's mental illness and shall provide
23 psychiatric, psychological and other counseling and treatment
24 for the defendant as it deems necessary."

25 SECTION 3. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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