

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1364

Short Title: Guilty But Insane Verdict.

(Public)

Sponsors: Representatives Rhodes, Burke, Duncan, Decker, Esposito; Abernethy, Arnold, Barbee, Bowie, Bowman, Brown, Brubaker, Buchanan, Church, Creech, Cromer, Culp, DeVane, Diamont, Dickson, L. Etheridge, Greenwood, Hege, Holmes, Howard, Huffman, S. Hunt, Jones, Justus, Kerr, Kimsey, Lail, Ligon, Lineberry, Loflin, McLaughlin, Nye, Privette, Stewart, R. Thompson, Warner, P. Wilson, G. Wilson, and Wood.

Referred to: Judiciary.

April 21, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE THE VERDICT IN A CRIMINAL CASE OF GUILTY BUT INSANE, AND TO ABOLISH THE PLEA AND VERDICT OF NOT GUILTY BY REASON OF INSANITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-101 is amended by adding a new subdivision to read:

"(4b) 'Guilty.' The term 'guilty' includes 'guilty but insane' as defined in G.S. 15A-1251."

Sec. 2. G.S. 15A-613 reads as rewritten:

§ 15A-613. Setting offense for trial in district court.

If an offense set for trial in the district court under the terms of G.S. 15A-604(b)(4) or any provision of G.S. 15A-612 is a lesser included offense of the charge before the court on a pleading, the judge may:

- (1) Accept a plea of ~~guilty~~ guilty, guilty but insane, or no contest, with the consent of the prosecutor; or
- (2) Proceed to try the offense immediately, with the consent of both the defendant and the prosecutor.

Otherwise, the judge must enter an appropriate order for subsequent calendaring of the case for trial in the district court. The trial so ordered may not be earlier than five

1 working days nor later than 15 working days from the date of the order. The judge must
2 note in the case records the new offense with which the defendant is charged, has been
3 tried, or to which he entered a plea of ~~guilty~~guilty, guilty but insane, or no contest."

4 Sec. 3. G.S. 15A-959 reads as rewritten:

5 "**§ 15A-959. Notice of ~~defense~~claim of insanity; pretrial determination of insanity.**

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

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

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

25 (d) Upon motion of the defendant and with the consent of the State the court may
26 conduct a hearing prior to the trial with regard to the defendant's claim that he was
27 insane at the time of the offense. If the court determines that the defendant was insane
28 at the time of the offense, it may make a finding to that effect which shall be binding
29 with regard to the sentencing of the defendant if he is convicted of the charge. The
30 court's denial of relief under this subsection is without prejudice to the defendant's right
31 to rely on the claim of insanity at trial. If the motion is denied, no reference to the
32 hearing may be made at the trial, and recorded testimony or evidence taken at the
33 hearing is not admissible as evidence at the trial."

34 Sec. 4. G.S. 15A-1011(a) reads as rewritten:

35 "(a) A defendant may plead not guilty, guilty, guilty but insane, or no contest '**(nolo**
36 **contendere)**.' A plea may be received only from the defendant himself in open court
37 except when:

- 38 (1) The defendant is a corporation, in which case the plea may be entered
39 by counsel or a corporate officer; or
- 40 (2) There is a waiver of arraignment and a filing of a written plea of not
41 guilty under G.S. 15A-945; or
- 42 (3) In misdemeanor cases there is a written waiver of appearance
43 submitted with the approval of the presiding judge; or

- 1 (4) Written pleas in traffic cases, hunting and fishing offenses under
2 Chapter 113, and boating offenses under Chapter 75A are authorized
3 under G.S. 7A-146(8); or
4 (5) The defendant executes a waiver and plea of not guilty as provided in
5 G.S. 15A-1011(d).
6 (6) The defendant, before a magistrate or clerk of court, enters a written
7 appearance, waiver of trial and plea of guilty and at the same time
8 makes restitution in a case wherein the sole allegation is a violation of
9 G.S. 14-107, the check is in an amount provided in G.S. 7A-273(8),
10 and the warrant does not charge a fourth or subsequent violation of this
11 statute."

12 Sec. 5. G.S. 15A-1237(c) reads as rewritten:

13 "(c) If the jurors find the defendant ~~not guilty on the ground that he was insane~~ guilty
14 but insane at the time of the commission of the offense charged, their verdict must so
15 state."

16 Sec. 6. Chapter 15A of the General Statutes is amended by adding a new
17 Article to read:

18 **"ARTICLE 74.**

19 **"DEFENDANTS FOUND GUILTY BUT INSANE.**

20 **"§ 15A-1251. Verdict of guilty but insane.**

21 In all cases in which the defense of insanity is interposed, the jury may consider
22 whether the defendant is guilty but insane at the time of the offense. For purposes of
23 this section, 'insane' means having a psychiatric disorder, including any mental illness or
24 mental retardation or a psychiatric disorder that results from drug use, which
25 substantially disturbs a person's thinking, feeling, or behavior and impairs the person's
26 ability to function. The sentencing provisions of G.S. 15A-1336 apply to any defendant
27 convicted under this section."

28 Sec. 7. G.S. 15A-1331 is amended by adding a new subsection to read:

29 "(c) Whenever a defendant is found guilty but insane or enters a plea to that effect
30 that is accepted by the court, the court shall sentence him in the same manner as a
31 defendant found guilty of the offense."

32 Sec. 8. G.S. 15A-1332 is amended by adding a new subsection to read:

33 "(d) Presentence Psychiatric Evaluation. The court shall order psychiatric
34 evaluation of a defendant who is found guilty but insane. The evaluation may be
35 conducted by the Department of Correction, the Department of Human Resources, or
36 any other qualified agency or person in the discretion of the court. The evaluation
37 report shall include a recommendation of what type of treatment would be appropriate if
38 the defendant is sentenced to an active term."

39 Sec. 9. Article 81 of Chapter 15A of the General Statutes is amended by
40 adding a new section to read:

41 **"§ 15A-1336. Sentencing for defendant found guilty but insane.**

42 (a) If a defendant is found guilty but insane and is committed to the Department
43 of Correction, the court shall order treatment in the manner indicated for his insanity.
44 The court shall order that the treatment be provided by:

1 (1) The Department of Correction; or

2 (2) The Department of Human Resources in a regional psychiatric facility
3 designated by the Division of Mental Health, Mental Retardation, and
4 Substance Abuse Services.

5 (b) The Department of Correction may bring an action in superior court to
6 discontinue or alter the treatment of any prisoner ordered under subsection (a). The
7 Department shall give notice of this action to the prisoner and the sentencing judge or, if
8 he is unavailable, the senior regular resident superior court judge of the district in which
9 the prisoner was convicted, and they may appear at the hearing. The court shall
10 determine whether the ordered treatment is still appropriate, whether other treatment
11 should be ordered, whether the prisoner should be sent to the general population of a
12 prison, or whether some other disposition should be ordered.

13 (c) Except as otherwise provided in this section, the sentencing procedures of this
14 Article apply to any defendant found guilty but insane."

15 Sec. 10. G.S. 15A-2001 reads as rewritten:

16 **"§ 15A-2001. Capital offenses; plea of guilty.**

17 Any person who has been indicted for an offense punishable by death may enter a
18 plea of guilty or guilty but insane at any time after his indictment, and the judge of the
19 superior court having jurisdiction may sentence such person to life imprisonment or to
20 death pursuant to the procedures of G.S. 15A-2000. Before sentencing the defendant,
21 the presiding judge shall impanel a jury for the limited purpose of hearing evidence and
22 determining a sentence recommendation as to the appropriate sentence pursuant to G.S.
23 15A-2000. The jury's sentence recommendation in cases where the defendant pleads
24 guilty or guilty but insane shall be determined under the same procedure of G.S. 15A-
25 2000 applicable to defendants who have been tried and found guilty or guilty but insane
26 by a jury."

27 Sec. 11. G.S. 15A-1321 and G.S. 15A-1322 are repealed.

28 Sec. 12. The plea and verdict of not guilty by reason of insanity are
29 abolished.

30 Sec. 13. This act shall become effective October 1, 1989, and shall apply to
31 crimes occurring on or after that date.