

**THE CODE OF CRIMINAL PROCEDURE (EXCERPT)**  
**Act 175 of 1927**

**768.36 Defense of insanity in compliance with MCL 768.20a; finding of "guilty but mentally ill"; waiver of right to trial; plea of guilty but mentally ill; examination of reports; hearing; sentence; evaluation and treatment; discharge; report to parole board; treatment as condition of parole or probation; period of probation; psychiatric reports.**

Sec. 36.

(1) If the defendant asserts a defense of insanity in compliance with section 20a of this chapter, the defendant may be found "guilty but mentally ill" if, after trial, the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense.

(b) The defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of that offense.

(c) The defendant has not established by a preponderance of the evidence that he or she lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

(2) If the defendant asserts a defense of insanity in compliance with section 20a of this chapter and the defendant waives his or her right to trial, by jury or by judge, the trial judge, with the approval of the prosecuting attorney, may accept a plea of guilty but mentally ill in lieu of a plea of guilty or a plea of nolo contendere. The judge shall not accept a plea of guilty but mentally ill until, with the defendant's consent, the judge has examined the report or reports prepared in compliance with section 20a of this chapter, the judge has held a hearing on the issue of the defendant's mental illness at which either party may present evidence, and the judge is satisfied that the defendant has proven by a preponderance of the evidence that the defendant was mentally ill at the time of the offense to which the plea is entered. The reports shall be made a part of the record of the case.

(3) If a defendant is found guilty but mentally ill or enters a plea to that effect which is accepted by the court, the court shall impose any sentence that could be imposed by law upon a defendant who is convicted of the same offense. If the defendant is committed to the custody of the department of corrections, the defendant shall undergo further evaluation and be given such treatment as is psychiatrically indicated for his or her mental illness or intellectual disability. Treatment may be provided by the department of corrections or by the department of community health as provided by law. Sections 1004 and 1006 of the mental health code, 1974 PA 258, MCL 330.2004 and 330.2006, apply to the discharge of the defendant from a facility of the department of community health to which the defendant has been admitted and to the return of the defendant to the department of corrections for the balance of the defendant's sentence. When a treating facility designated by either the department of corrections or the department of community health discharges the defendant before the expiration of the defendant's sentence, that treating facility shall transmit to the parole board a report on the condition of the defendant that contains the clinical facts, the diagnosis, the course of treatment, the prognosis for the remission of symptoms, the potential for recidivism, the danger of the defendant to himself or herself or to the public, and recommendations for future treatment. If the parole board considers the defendant for parole, the board shall consult with the treating facility at which the defendant is being treated or from which the defendant has been discharged and a comparable report on the condition of the defendant shall be filed with the board. If the defendant is placed on parole, the defendant's treatment shall, upon recommendation of the treating facility, be made a condition of parole. Failure to continue treatment except by agreement with the designated facility and parole board is grounds for revocation of parole.

(4) If a defendant who is found guilty but mentally ill is placed on probation under the jurisdiction of the sentencing court as provided by law, the trial judge, upon recommendation of the center for forensic psychiatry, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment, except by agreement with the treating agency and the sentencing court, is grounds for revocation of probation. The period of probation shall not be for less than 5 years and shall not be shortened without receipt and consideration of a forensic psychiatric report by the sentencing court. Treatment shall be provided by an agency of the department of community health or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians, or other mental health personnel. A psychiatric report shall be filed with the probation officer and the sentencing court every 3 months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the center for forensic psychiatry or any other facility certified by department of community health for the performance of forensic psychiatric evaluation.

**History:** Add. 1975, Act 180, Eff. Aug. 6, 1975 ;-- Am. 2002, Act 245, Eff. May 1, 2002 ;-- Am. 2014, Act 76, Imd. Eff. Mar. 28, 2014

**Constitutionality:** The Michigan supreme court found that subsection (4) of this section, governing the grant of probation to guilty but

mentally ill persons, does not violate the equal protection and due process clauses of the federal and state constitutions. *People v McCleod*, 407 Mich 632; 288 NW2d 909 (1980).

**Compiler's Notes:** For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.