

AN ACT

RELATING TO CRIMINAL SENTENCING; AMENDING A SECTION OF THE
NMSA 1978 REGARDING A PLEA OF GUILTY BUT MENTALLY ILL.

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

Section 1. Section 31-9-3 NMSA 1978 (being Laws 1982,
Chapter 55, Section 1) is amended to read:

"31-9-3. 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 or who is currently suffering from a mental
illness is not relieved of criminal responsibility for his
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 which afflicted a person at the
time of the commission of the offense or is currently
suffering from a mental illness and which impaired that
person's judgment, but not to the extent that he did not know
what he was doing or understand the consequences of his act
or did not know that his act was wrong or could not prevent
himself from committing the act.

B. A plea or finding of guilty but mentally ill
is not an affirmative defense but an alternative plea or
finding that may be accepted or made pursuant to appropriate

evidence when the affirmative defense of insanity is raised or the plea of guilty but mentally ill is made.

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

D. When a defendant has asserted a defense of insanity or asserts that he is currently suffering from a mental illness, the court may find the defendant guilty but mentally ill if, after hearing all of the evidence, the court finds beyond a reasonable doubt that the defendant:

- (1) is guilty of the offense charged;
- (2) was mentally ill at the time of the commission of the offense; and either
- (3) was not legally insane at the time of the commission of the offense; or
- (4) is currently suffering from a mental illness.

E. When a defendant has asserted a defense of insanity or asserts that he is currently suffering from a mental illness, the court, where warranted by the evidence,

shall provide the jury with a special verdict form of guilty but mentally ill and shall separately instruct the jury that a verdict of guilty but mentally ill may be returned instead of a verdict of guilty or not guilty and that such a verdict requires a finding by the jury beyond a reasonable doubt that the defendant committed the offense charged and that the defendant was not legally insane at the time of the commission of the offense but that he was mentally ill at that time or that he is currently suffering from a mental illness."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____