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CHAPTER 24

Mentally Ill or Insane Defendants

**SECTION 17‑24‑10.** Affirmative defense.

 (A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

 (B) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

 (C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

HISTORY: 1984 Act No. 396, Section 1; 1988 Act No. 323, Section 1; 1989 Act No. 93, Section 1.

**SECTION 17‑24‑20.** Guilty but mentally ill; general requirements for verdict.

 (A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17‑24‑10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

 (B) To return a verdict of “guilty but mentally ill” the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

 (C) The verdict of guilty but mentally ill may be rendered only during the phase of a trial which determines guilt or innocence and is not a form of verdict which may be rendered in the penalty phase.

 (D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17‑24‑20(A).

HISTORY: 1984 Act No. 396, Section 2; 1988 Act No. 323, Section 2; 1989 Act No. 93, Section 2.

**SECTION 17‑24‑30.** Form of verdict.

 In a prosecution for a crime when the affirmative defense of insanity is raised sufficiently by the defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, the trier of fact shall find under the applicable law, and the verdict must so state, whether the defendant is:

 (1) guilty;

 (2) not guilty;

 (3) not guilty by reason of insanity; or

 (4) guilty but mentally ill.

HISTORY: 1984 Act No. 396, Section 3; 1988 Act No. 323, Section 3; 1989 Act No. 93, Section 3.

**SECTION 17‑24‑40.** Commitment of person found not guilty by reason of insanity.

 (A) In the event a verdict of “not guilty by reason of insanity” is returned, the trial judge must order the person who was the defendant committed to the South Carolina State Hospital for a period not to exceed one hundred twenty days. During that time, an examination must be made of the person to determine the need for hospitalization of the person pursuant to the standards set forth in Section 44‑17‑580.

 (B) A report of the findings must be made to the chief administrative judge of the circuit in which the trial was held, the solicitor, the person, and the person’s attorney.

 (C)(1) Within fifteen days after receipt of this report by the court, the chief administrative judge of the circuit in which the trial was held must hold a hearing to decide whether the person should be hospitalized pursuant to the standard of Section 44‑17‑580.

 (2)(a) If the chief administrative judge finds the person not to be in need of hospitalization, the judge may order the person released upon such terms or conditions, if any, as the judge considers appropriate for the safety of the community and the well‑being of the person.

 (b) In the event the chief administrative judge finds the person to be in need of hospitalization, the judge must order the person committed to the South Carolina State Hospital.

 (c) If at a later date it is determined by officials of the State Hospital that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge, the solicitor, the person, and the person’s attorney. Within twenty‑one days after the receipt of this notice, the chief administrative judge, upon notice to all parties, must hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44‑17‑580. If the finding of the court is that the person is in need of continued hospitalization, the court must order his continued confinement. If the court’s finding is that the person is not in need of continued hospitalization, it may order the person released upon such terms and conditions, if any, as the chief administrative judge considers appropriate for the safety of the community and the well‑being of the person.

 (D) Any terms and conditions imposed by the chief administrative judge must be therapeutic in nature, not punitive. Therapeutic terms must include, but not be limited to, requirements that the person:

 (1) continue taking medication for an indefinite time and verify in writing the use of medication;

 (2) receive periodic examinations and reviews by psychiatric personnel; and

 (3) report periodically to the probation office for an evaluation of his reaction to his environment and his general welfare.

 (E) The chief administrative judge of the circuit in which the trial was held at all times has jurisdiction over the person for the purposes of this chapter.

 (F) If a person is committed to the supervision of the Department of Mental Health pursuant to this section after having been found not guilty by reason of insanity of a violent crime, the person may not leave the facility or grounds to which he is committed at any time unless accompanied by an employee of the department who must be responsible for and in the physical presence of the person at all times. For purposes of this section, a violent crime includes those offenses described in Section 16‑1‑60 and the common law offense of assault and battery of a high and aggravated nature.

HISTORY: 1984 Act No. 396, Section 4; 2002 Act No. 348, Section 1, eff July 20, 2002.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

**SECTION 17‑24‑50.** Length of confinement or supervision of defendant found not guilty by reason of insanity.

 In no case shall a defendant found not guilty by reason of insanity be confined or be under supervision longer than the maximum sentence for the crime with which he was charged without full civil commitment proceedings being held.

HISTORY: 1984 Act No. 396, Section 5.

**SECTION 17‑24‑60.** Petition by attorney of defendant found not guilty by reason of insanity.

 Two years from the date of commitment the defendant’s attorney may petition the chief administrative judge to be relieved as counsel.

HISTORY: 1984 Act No. 396, Section 6.

**SECTION 17‑24‑70.** Sentencing of defendant found guilty but mentally ill.

 If a verdict is returned of “guilty but mentally ill” the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however:

 (A) If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.

 (B) If the sentence includes a probationary sentence, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

HISTORY: 1984 Act No. 396, Section 7; 1988 Act No. 323, Section 4.

**SECTION 17‑24‑80.** Release of defendant.

 (A) Should a defendant be released pursuant to Sections 17‑24‑40(C)(2)(a), 17‑24‑40(C)(2)(c), or 17‑24‑70(B) herein, the solicitor shall immediately notify the local probation office and it shall then be the responsibility of the probation office to monitor compliance by the defendant of the terms and conditions of his release.

 (B) The probation office shall file reports quarterly or more often, if necessary, of the defendant’s compliance with the terms of his release with the circuit solicitor, the chief administrative judge of the circuit, the defendant’s attorney, and the defendant.

 (C) In the event the defendant violates any of the terms of his release, notice of the violation shall be immediately given by the probation office to the chief administrative judge of the circuit, the circuit solicitor, the defendant’s attorney, and the defendant. Upon the receipt of the notice the chief administrative judge, upon notice to all parties, may order a hearing and order inpatient treatment if he finds the defendant in need of hospitalization pursuant to the standard of Section 44‑17‑580 of the 1976 Code, or order such other action as he may deem appropriate.

HISTORY: 1984 Act No. 396, Section 8.