

---

## Judiciary Committee

---

### HB 2496

**Title:** An act relating to finding a defendant guilty but with a mental disability.

**Brief Description:** Concerning defendants who are guilty but have a mental disability.

**Sponsors:** Representative Schmick.

#### Brief Summary of Bill

- Creates an alternative plea or finding of "guilty but with a mental disability" for criminal defendants who were not insane at the time the offense was committed, but were suffering from a mental disability.

**Hearing Date:** 1/31/14

**Staff:** Omeara Harrington (786-7136).

#### Background:

A person may be acquitted of criminal charges on grounds of insanity if, at the time of the criminal offense, he or she had a mental disease or defect that created an inability to: (a) perceive the nature or the quality of the act with which he or she is charged; or (b) tell right from wrong with reference to the particular act charged. Whenever a defendant has entered a plea of not guilty by reason of insanity (NGRI), the defendant must be evaluated. Evaluation reports must include an expert's diagnosis and opinion as to the defendant's sanity at the time of the act, the threat the defendant poses to public safety, and other matters.

The burden is on the defendant to establish the defense of insanity by a preponderance of the evidence. Whenever the issue of insanity is submitted to the jury, the jury must return a special verdict in a form outlined in statute that contains yes or no questions concerning whether the defendant was acquitted because of insanity and whether the defendant presents a substantial danger to others.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

If a defendant is found NGRI, the defendant may be placed in the custody of the Department of Social and Health Services (DSHS) and committed to a state hospital if the judge or jury determines that the defendant presents a substantial danger to others or there is a substantial likelihood of the defendant committing criminal acts which jeopardize public safety or security. The DSHS is required to promptly examine and diagnose any individual committed following a NGRI acquittal and must provide the person with adequate care and individualized treatment. The maximum length of commitment permitted for a defendant acquitted as NGRI is equal to the maximum sentence permitted for any charged criminal offense.

**Summary of Bill:**

An alternative plea or finding of "guilty but with a mental disability" (GMD) is created for persons who, at the time of the offense, were not insane but were suffering from a mental disability. A mental disability is defined as a substantial disorder of thought, mood, or behavior that impaired the person's judgment at the time the offense was committed, but not to the extent that the person did not know what they were doing, did not understand the consequences of the act, did not know that the act was wrong, or could not prevent themselves from committing the act. A plea of GMD may be accepted as an alternative to a plea of guilty or, if the defendant has asserted an insanity defense, a finding of GMD may be entered as an alternative to a finding of NGRI.

Upon assertion of a GMD plea, the defendant must undergo examination by a clinical psychologist or psychiatrist. The court may not accept the plea until it is satisfied that there is a factual basis for the plea based on a review of the psychological or psychiatric report and a hearing on the defendant's mental condition.

When a defendant has asserted a defense of insanity, the court may enter an alternative finding of GMD if certain criteria are met. A defendant may be found GMD as an alternative to finding of NGRI if the finder of fact finds beyond a reasonable doubt that the defendant is guilty, had a mental disability at the time of the commission of the offense, and was not legally insane at the time of the commission of the offense. In a jury trial, the question of GMD is submitted the jury with a special verdict form.

A finding of GMD is not an affirmative defense and does not relieve the defendant from criminal responsibility for the offense. The court must sentence a defendant found GMD as though he or she had been found guilty. If the defendant is committed to Department of Corrections custody, the defendant must be observed, diagnosed, and treated as indicated for the mental disability in the manner as is prescribed for individuals who are found NGRI and committed to DSHS custody.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2014.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.