

# House of Representatives

# Supplementary Order Paper

**Tuesday, 29 June 2021**

## **Rights for Victims of Insane Offenders Bill**

### *Proposed amendments to SOP No 40*

Hon Louise Upston, in Committee, to move the following amendments:

#### *Clause 2*

In *clause 2*, replace “July” with “September”.

#### *Clause 3A: definition of proven but insane*

In *clause 3A*, replace the definition of **proven but insane** with:

**proven but insane**, in respect of a defendant charged with an offence, means—

- (a) the defendant is found to have caused the act or omission that forms the basis of the offence with which the defendant is charged; and
- (b) the defendant was insane at the time that the defendant caused that act or omission

#### *Clause 5: new section 20*

Replace *clause 5, new section 20* with:

#### **20 Finding of insanity**

- (1) If, at a trial, the defendant gives evidence as to the defendant’s insanity and the jury or (if there is no jury) the Judge makes a finding of proven but insane, the Judge must—
  - (a) record a finding of proven but insane; and
  - (b) explain the meaning of that finding to the defendant; and
  - (c) acquit the defendant on account of the defendant’s insanity.

- (2) Before or at a trial, the Judge must do the things specified in **subsection (1)** if—
  - (a) the defendant indicates an intention to raise the defence of insanity; and
  - (b) the prosecution agrees that the only reasonable verdict is a finding of proven but insane; and
  - (c) the Judge is satisfied, on the basis of expert evidence, that the defendant was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the act or omission that forms the basis of the offence with which the defendant is charged.
- (3) If, at a trial before a jury, the defendant gives evidence as to the defendant's insanity and the jury finds the defendant not guilty, the Judge must ask the jury whether it has acquitted the defendant on account of the defendant's insanity.
- (4) The Judge must do the things specified in **subsection (1)** if—
  - (a) the Judge asks the jury under **subsection (3)** whether it has acquitted the defendant on account of the defendant's insanity; and
  - (b) the jury responds that it has acquitted the defendant on account of the defendant's insanity.
- (5) If it appears from the evidence that the defendant may have been insane at the time of the commission of the offence, the Judge may ask the jury to find whether the defendant was insane within the meaning of section 23 of the Crimes Act 1961, even though the defendant has not given evidence as to the defendant's insanity or put the question of the defendant's sanity in issue.

### Explanatory note

This Supplementary Order Paper (**SOP**) amends SOP No 40, which in turn amends the Rights for Victims of Insane Offenders Bill (the **Bill**).

The SOP amends *clause 2* of SOP No 40 to change the commencement date of the Bill from 1 July 2022 to 1 September 2022. This reflects the Justice Committee's intention to give departments sufficient time to comply with the Bill's requirements, given the time that the Bill has taken to reach its current stage in the House.

The remaining amendments in the SOP are intended to ensure that the changes that the Bill would make to sections 4 and 20 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **Act**) will work properly in a court setting.

The SOP amends the definition of proven but insane in *clause 3A* of SOP No 40 to align the language more closely with the language used in sections 10(2), 11(2), and 12(2) of the Act, which relate to a defendant found unfit to stand trial.

The SOP amends *clause 5* of SOP No 40 to make the following changes to section 20 of the Act:

- The SOP amends *new section 20(1)* by reverting to the language of existing section 20(1), in order to better reflect the Justice Committee’s intention that the Bill should change only the wording of the verdict and should not affect existing court procedures:
- The SOP clarifies that the same consequences should follow from a finding of proven but insane as currently follow from a finding of not guilty on account of insanity. The SOP does this by amending *new section 20(1)* to require a Judge to acquit “on account of the defendant’s insanity” a defendant who is found proven but insane. This language reflects the language used in sections 21, 23 to 25, and 33 of the Act, which set out the consequences of a finding of not guilty on account of insanity:
- The SOP amends *new section 20(1)* to require a Judge to explain the meaning of a finding of proven but insane to the defendant:
- The SOP replaces inaccurate language in existing section 20(2)(c), which refers to “the commission of the offence”. The SOP does this by amending *new section 20(2)(c)* to use language that aligns with the definition of proven but insane, replacing “the commission of the offence” with “the act or omission that forms the basis of the offence with which the defendant is charged”:
- The SOP amends *new section 20(4)* consequentially to align it with the proposed changes to *new section 20(1)*.