

SENATE BILL REPORT

HB 2328

As Reported By Senate Committee On:
Judiciary, February 21, 2006

Title: An act relating to the insanity defense.

Brief Description: Changing provisions relating to the insanity defense.

Sponsors: Representatives Lantz and Priest.

Brief History: Passed House: 2/08/06, 98-0.

Committee Activity: Judiciary: 2/21/06 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin and Rasmussen.

Staff: Aldo Melchiori (786-7439)

Background: A criminal defendant who pleads not guilty by reason of insanity has the burden of proving by a preponderance of the evidence that because of a mental disease or defect at the time of the crime he or she was unable to perceive the nature and quality of the act charged or was unable to tell right from wrong with respect to the act. The insanity defense is not a negation of any element of the crime charged. A successful insanity defense represents a determination that, because of his or her mental illness, a person should not be held criminally liable, even though he or she did commit the crime. A person acquitted of crime because of insanity may be subject to involuntary commitment to a mental hospital if he or she is found to be dangerous.

Under statutorily prescribed procedures, whenever a person pleads not guilty by reason of insanity, the court appoints at least two experts to determine the defendant's mental condition. At least one of the experts must be approved by the prosecution. The defendant is entitled to an attorney during the examination and may refuse to answer any question he or she believes may tend to be incriminating. The Washington State Supreme Court has held that neither the state nor federal Constitution's privilege against self-incrimination applies to these mental examinations. In *State v. Carneh* (2004), the Court held that the statutory right to refuse to answer questions creates a privilege against self-incrimination different from and in addition to any right under either Constitution.

Either the defendant or the prosecution may engage experts to testify at trial, but an expert who has not personally examined the defendant cannot offer an opinion about the defendant's mental state at the time of the charged offense.

Summary of Bill: An insanity plea defendant's privilege against answering questions in a mental examination is removed. A defendant who refuses to answer questions during an examination may not present his or her own expert's testimony at trial. These changes apply to mental examinations performed on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill brings the statute in line with the protections provided by the state and federal constitutions. The integrity of the judicial system is preserved because the court will have a full and objective evaluation of the facts supporting an insanity defense.

Testimony Against: None.

Who Testified: PRO: Representative Lantz, prime sponsor; Roger Davidheiser, WAPA.