

---

## Judiciary Committee

---

### HB 2887

**Title:** An act relating to criminal defendants who are guilty and mentally ill.

**Brief Description:** Concerning criminal defendants who are guilty and mentally ill.

**Sponsors:** Representatives Hurst, Maxwell, Conway, Kenney, Kelley and Pearson; by request of Governor Gregoire.

Brief Summary of Bill
<ul style="list-style-type: none"><li>• Permits a verdict of "guilty and mentally ill" in a criminal proceeding.</li><li>• Requires offenders found guilty and mentally ill to be under the jurisdiction of the Department of Corrections.</li></ul>



**Hearing Date:** 1/25/10

**Staff:** Courtney Barnes (786-7194).

**Background:**

Not Guilty by Reason of Insanity.

State law permits a person accused of a crime to offer an insanity defense. The burden is on the defendant to establish the defense of insanity by a preponderance of the evidence. The defense is established if the defendant proves that, at the time of the criminal offense, he or she had a mental disease or defect which affected the defendant to such an extent that either the defendant was unable to: (a) perceive the nature or the quality of the act with which the defendant is charged; or (b) tell right from wrong with reference to the particular act charged.

Whenever the issue of insanity is submitted to the jury, the jury must return a special verdict in a form 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 form is outlined in statute.

---

*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 not guilty by reason of insanity (NGRI), the defendant may be 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 Department of Social and Health Services supervises individuals committed to state hospitals. Upon certain conditions, a defendant acquitted NGRI who is committed to a state hospital may be released or granted a conditional release. Generally, the maximum length of commitment permitted for a defendant acquitted NGRI is the maximum sentence permitted for the charged criminal offense.

#### The Department of Corrections.

The Department of Corrections (DOC) is responsible for administering adult corrections programs operated by the state. These programs include state correctional institutions and programs for offenders supervised in the community. The DOC is required to supervise certain offenders released on community custody. Prior to release, the DOC must identify offenders in its custody who are believed to be dangerous to themselves and others and who have a mental disorder or illness. Once identified, the DOC is required to develop a release plan for treatment and support services that may be needed once the offender leaves the custody of the DOC.

#### **Summary of Bill:**

#### Guilty and Mentally Ill.

A defendant who pleads NGRI may be found guilty and mentally ill at trial if: (a) the state proves that the defendant is guilty of the crime charged; (b) the defendant has failed to prove the insanity defense; and (c) the defendant or the state proves that the defendant was mentally ill at the time of the commission of the offense and that the defendant's actions at the time of the offense were affected by symptoms of mental illness. A court may accept a plea of guilty and mentally ill if the defendant has undergone an evaluation by a psychologist or psychiatrist, and the court finds after a hearing that there is a factual basis for the plea.

"Mental illness" and "mentally ill" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions, but not rising to the level of insanity.

Modifications are made to the special verdict form provided to a jury considering an insanity defense, including removing the question of whether the defendant was acquitted because of insanity existing at the time of the act charged.

#### The Department of Corrections.

A defendant who is found guilty and mentally ill may receive any sentence that may be lawfully imposed on any person convicted of the same offense. The defendant is placed under the jurisdiction of the DOC. The DOC must supervise a defendant sentenced to community custody who has been found guilty and mentally ill regardless of the defendant's risk classification.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/22/10.

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