

# HOUSE BILL REPORT

## HB 2328

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to the insanity defense.

**Brief Description:** Changing provisions relating to the insanity defense.

**Sponsors:** Representatives Lantz and Priest.

**Brief History:**

**Committee Activity:**

Judiciary: 1/11/06 [DP].

**Brief Summary of Bill**

- Removes a defendant's statutory privilege against self-incrimination during an insanity defense mental examination; and
- Prevents a defendant's mental condition expert from testifying at trial if the defendant fails to cooperate during an insanity defense mental examination.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

**Staff:** Bill Perry (786-7123).

**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. It is not a defense that is designed to raise a reasonable doubt about the prosecution's required proof of those elements. 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. However, 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 is to appoint at least two experts to examine 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, however, that neither the state nor federal Constitution's privilege against self-incrimination applies to these mental examinations. In a very recent case, *State v. Carneh*, 153 Wn.2d 274 (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.

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**Summary of Bill:**

An insanity plea defendant's privilege against answering questions in a mental examination is removed. Such 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.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The current statute deprives the state of an opportunity for full disclosure to the court of facts relating to the insanity defense. Defendants now are able to pick and choose which questions to answer. The defendant can answer his or her own experts questions in order to establish his insanity defense, and then refuse to answer the state's expert, leaving the state's expert unable to express an opinion at trial about the defendant's alleged insanity. The bill brings the law into line with what is already the case in diminished capacity cases.

**Testimony Against:** None.

**Persons Testifying:** Roger Davidheiser, King County Prosecutor's Office, and Washington Association of Prosecuting Attorneys'.

**Persons Signed In To Testify But Not Testifying:** None.