

# SENATE BILL REPORT

## SB 5253

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As Reported by Senate Committee On:  
Human Services & Corrections, February 20, 2009

**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:** Senators Carrell, Brandland and Swecker.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/05/09, 2/20/09 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5253 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

**Staff:** Kevin Black (786-7747)

**Background:** The affirmative defense of not guilty by reason of insanity is established if a defendant proves, by a preponderance of the evidence, that at the time of the criminal offense, the defendant had a mental disease or defect which affected the defendant to the extent that either the defendant was unable to perceive the nature or the quality of the act with which the defendant is charged, or that the defendant was unable to tell right from wrong with reference to the particular act charged.

A defendant who has been found not guilty by reason of insanity may be committed for treatment to a state hospital if the defendant presents a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security. The maximum length of commitment is the maximum term of the offense for which the person was acquitted by reason of insanity.

Thirteen states have a verdict of guilty and mentally ill, including Alaska, Delaware, Georgia, Illinois, Indiana, Kentucky, Michigan, Montana, New Mexico, Pennsylvania, South Carolina, South Dakota, and Utah.

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*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.*

**Summary of Bill (Recommended Substitute):** A defendant who has offered a defense of insanity at trial may be found "guilty and mentally ill" if the judge or jury finds that the state has proven the defendant guilty of the crime charged, the defendant has failed to prove the asserted insanity defense, and finds that the defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of the offense. A court may also accept a plea of guilty and mentally ill from a defendant who waives trial.

A person who is found guilty and mentally ill will be sentenced as if the person were found guilty. The person will be placed under the jurisdiction of the Department of Corrections (DOC), but will be committed to a secure mental health facility operated by the Department of Social and Health Services (DSHS) for mental health treatment. The person will be discharged when the sentence is completed, and may be discharged to the custody of DOC before the end of sentence if the person no longer needs mental health treatment, or the person's condition has stabilized to the point at which the person can be maintained in the custody of DOC without substantial risk to the health, safety, or well-being of the person or others.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute):** Persons found guilty and mentally ill will be committed to DSHS for mental health treatment, instead of DOC.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: DOC will provide better supervision than the Mental Health Division following release. Taking responsibility for crime is a positive step for persons with mental illness, who will be able to get treatment in prison. Holding persons with mental illnesses responsible for the crimes they commit makes sense for crime victims.

CON: This bill is an empty promise, because it doesn't provide any funding for treatment for a mentally ill person in prison or following release. This bill stigmatizes the mentally ill. The new verdict would not be limited to crimes of violence. DOC provides the wrong kind of treatment and the wrong kind of supervision.

OTHER: This is not the year to pursue this idea, which needs additional thought and study.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor; Jim Adams, National Alliance on Mental Illness; Jenny Weiland Warp, Families & Friends of Violent Crime Victims; Dan Satterburg, King County Prosecutor.

CON: Eileen Farley, Northwest Defenders Association.

OTHER: Tom McBride, Washington Association of Prosecuting Attorneys; Mary Heitzman, citizen.