
HOUSE BILL 2887

State of Washington

61st Legislature

2010 Regular Session

By Representatives Hurst, Maxwell, Conway, Kenney, Kelley, and Pearson; by request of Governor Gregoire

Read first time 01/15/10. Referred to Committee on Judiciary.

1 AN ACT Relating to criminal defendants who are guilty and mentally
2 ill; amending RCW 10.77.040 and 9.94A.501; and adding a new section to
3 chapter 10.77 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.77 RCW
6 to read as follows:

7 (1) A person who timely offers a defense of insanity pursuant to
8 RCW 10.77.030 may be found "guilty and mentally ill" at trial if the
9 trier of fact finds that:

10 (a) The state has proven beyond a reasonable doubt that the
11 defendant is guilty of the crime charged;

12 (b) The defendant has failed to prove by a preponderance of the
13 evidence the asserted insanity defense; and

14 (c) The defendant or the state has proven by a preponderance of the
15 evidence that the defendant was mentally ill at the time of the
16 commission of the offense and that the symptoms of the defendant's
17 mental illness affected the defendant's decision making at the time of
18 the commission of the offense.

1 (2) A person who waives the right to trial may plead guilty and
2 mentally ill. No plea of guilty and mentally ill may be accepted by
3 the trial judge until the defendant has undergone examination by a
4 psychologist or psychiatrist and the judge has examined the
5 psychological or psychiatric report or reports, has held a hearing on
6 the issue of the defendant's mental condition, and is satisfied that
7 there is a factual basis that the defendant was mentally ill at the
8 time of the offense to which the plea is entered. If the trial judge
9 refuses to accept a plea of guilty and mentally ill, the defendant
10 shall be permitted to withdraw the plea.

11 (3) A person found guilty and mentally ill or whose plea of guilty
12 and mentally ill is accepted pursuant to subsection (2) of this section
13 may have any sentence imposed that may lawfully be imposed on any
14 person convicted of the same offense, including standard range or an
15 exceptional or mitigated sentence.

16 (4) The person shall be placed under the jurisdiction of the
17 department of corrections.

18 (5) For the purposes of this section, "mental illness" and
19 "mentally ill" means any organic, mental, or emotional impairment that
20 has substantial adverse effects on a person's cognitive or volitional
21 functions, but not rising to the level of insanity pursuant to RCW
22 9A.12.010.

23 **Sec. 2.** RCW 10.77.040 and 1998 c 297 s 33 are each amended to read
24 as follows:

25 Whenever the issue of insanity is submitted to the jury, the court
26 shall instruct the jury to return a special verdict in substantially
27 the following form:

28		answer
29		yes or
30		no
31	1.	Did the defendant commit the act
32		charged?

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2. If your answer to number 1 is yes,
~~((do you acquit him or her because
of insanity existing))~~ was the
defendant mentally ill at the time of
the act charged?
 3. If your answer to number 2 is yes,
~~((is the defendant a substantial
danger to other persons unless kept
under further control by the court or
other persons or institutions))~~ was
the defendant's mental illness a
contributing factor to the
commission of the offense?
 4. If your answer to number ~~((2))~~ 3 is
yes, ~~((does the defendant present a
substantial likelihood of committing
criminal acts jeopardizing public
safety or security unless kept under
further control by the court or other
persons or institutions))~~ was the
defendant unable to appreciate the
nature and quality of the act he or
she was doing to such an extent that
he or she did not know that what he
or she was doing was wrong?
 5. If your answer to number 4 is yes, is
the defendant a substantial danger to
other persons unless kept under
further control by the court or other
persons or institutions?
 6. If your answer to number 4 is yes,
does the defendant present a
substantial likelihood of committing
criminal acts jeopardizing public
safety or security unless kept under
further control by the court or other
persons or institutions?

1 7. If your answers to either number
2 ((3)) 5 or number ((4)) 6 is yes, is it
3 in the best interests of the defendant
4 and others that the defendant be
5 placed in treatment that is less
6 restrictive than detention in a state
7 mental hospital?

8 **Sec. 3.** RCW 9.94A.501 and 2009 c 376 s 2 are each amended to read
9 as follows:

10 (1) The department shall supervise every offender convicted of a
11 misdemeanor or gross misdemeanor offense who is sentenced to probation
12 in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for
13 an offense included in (a) and (b) of this subsection. The superior
14 court shall order probation for:

15 (a) Offenders convicted of fourth degree assault, violation of a
16 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
17 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
18 and who also have a prior conviction for one or more of the following:

- 19 (i) A violent offense;
20 (ii) A sex offense;
21 (iii) A crime against a person as provided in RCW 9.94A.411;
22 (iv) Fourth degree assault; or
23 (v) Violation of a domestic violence court order; and

24 (b) Offenders convicted of:
25 (i) Sexual misconduct with a minor second degree;
26 (ii) Custodial sexual misconduct second degree;
27 (iii) Communication with a minor for immoral purposes; and
28 (iv) Failure to register pursuant to RCW 9A.44.130.

29 (2) Misdemeanor and gross misdemeanor offenders supervised by the
30 department pursuant to this section shall be placed on community
31 custody.

32 (3) The department shall supervise every felony offender sentenced
33 to community custody whose risk assessment, conducted pursuant to
34 subsection (6) of this section, classifies the offender as one who is
35 at a high risk to reoffend.

36 (4) Notwithstanding any other provision of this section, the

1 department shall supervise an offender sentenced to community custody
2 regardless of risk classification if the offender:

3 (a) Has a current conviction for a sex offense or a serious violent
4 offense as defined in RCW 9.94A.030;

5 (b) Has been identified by the department as a dangerous mentally
6 ill offender pursuant to RCW 72.09.370;

7 (c) Has an indeterminate sentence and is subject to parole pursuant
8 to RCW 9.95.017;

9 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670;
10 (~~or~~)

11 (e) Is subject to supervision pursuant to RCW 9.94A.745; or

12 (f) Was found guilty and mentally ill under section 1 of this act.

13 (5) The department is not authorized to, and may not, supervise any
14 offender sentenced to a term of community custody or any probationer
15 unless the offender or probationer is one for whom supervision is
16 required under subsection (1), (2), (3), or (4) of this section.

17 (6) The department shall conduct a risk assessment for every felony
18 offender sentenced to a term of community custody who may be subject to
19 supervision under this section.

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