
SUBSTITUTE SENATE BILL 5253

State of Washington 61st Legislature 2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Carrell, Brandland, and Swecker)

READ FIRST TIME 02/23/09.

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

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 has proven by a preponderance of the evidence
15 that he or she was mentally ill at the time of the commission of the
16 offense.

17 (2) A person who waives the right to trial may plead guilty and
18 mentally ill. No plea of guilty and mentally ill may be accepted by
19 the trial judge until the defendant has undergone examination by a

1 psychologist or psychiatrist and the judge has examined the
2 psychological or psychiatric report or reports, has held a hearing on
3 the issue of the defendant's mental condition, and is satisfied that
4 there is a factual basis that the defendant was mentally ill at the
5 time of the offense to which the plea is entered. If the trial judge
6 refuses to accept a plea of guilty and mentally ill, the defendant
7 shall be permitted to withdraw the plea.

8 (3) A person found guilty and mentally ill or whose plea of guilty
9 and mentally ill is accepted pursuant to subsection 2 of this section
10 may have any sentence imposed that may lawfully be imposed on any
11 person convicted of the same offense. The person shall be placed under
12 the jurisdiction of the department of corrections, but shall be
13 committed into the custody of the department of social and health
14 services, which shall place the person in a secure mental health
15 facility for the purpose of mental health treatment.

16 (4) A person shall not remain confined for treatment at a secure
17 mental health facility under subsection (3) of this section for longer
18 than the confinement term of the person's sentence. The person shall
19 be eligible for earned release time under RCW 9.94A.728, as determined
20 by the department of corrections and the department of social and
21 health services according to subsection (6) of this section. The
22 department of social and health services shall have the authority to
23 discharge the person and return the person to the custody of the
24 department of corrections at any time prior to the completion of
25 sentence, if the department of social and health services determines
26 that such a discharge will be in the person's best interest, or that
27 the person can no longer benefit from mental health treatment, or that
28 the person's condition has stabilized to the point at which the person
29 can be maintained in the custody of the department of corrections
30 without any substantial risk to the health, safety, or well-being of
31 the person or others. A person who is discharged from the custody of
32 the department of social and health services under this subsection
33 shall be released with a report describing the person's condition,
34 diagnosis, course of treatment, prognosis for remission of symptoms,
35 danger to self or others, and recommendations for further treatment.

36 (5) A person committed to a secure mental health facility under
37 this section shall not become eligible for unescorted privileges on the
38 grounds or outside the grounds of the facility before the end of the

1 confinement term of the person's sentence without the written
2 permission of the secretary of the department of corrections or the
3 secretary's designee.

4 (6) The department of corrections and department of social and
5 health services may adopt rules or make agreements necessary for the
6 implementation of this section.

7 (7) For the purposes of this section, "mental illness" and
8 "mentally ill" means a substantial disorder of thought, mood, or
9 behavior that has a substantial adverse effect on a person's cognitive
10 or volitional functions, but not rising to the level of insanity
11 pursuant to RCW 9A.12.010.

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

14 Whenever the issue of insanity is submitted to the jury, the court
15 shall instruct the jury to return a special verdict in substantially
16 the following form:

- | | | |
|----|----|--|
| 17 | | answer |
| 18 | | yes or |
| 19 | | no |
| 20 | 1. | Did the defendant commit the act |
| 21 | | charged? |
| 22 | 2. | If your answer to number 1 is yes, |
| 23 | | do you acquit him or her because of |
| 24 | | insanity existing at the time of the |
| 25 | | act charged? |
| 26 | 3. | <u>If your answer to number 2 is no,</u> |
| 27 | | <u>has the defendant proven that he or</u> |
| 28 | | <u>she was mentally ill at the time of</u> |
| 29 | | <u>the commission of the offense?</u> |
| 30 | 4. | If your answer to number 2 is yes, is |
| 31 | | the defendant a substantial danger to |
| 32 | | other persons unless kept under |
| 33 | | further control by the court or other |
| 34 | | persons or institutions? |

- 1 ((4-)) If your answer to number 2 is yes,
 2 5. does the defendant present a
 3 substantial likelihood of committing
 4 criminal acts jeopardizing public
 5 safety or security unless kept under
 6 further control by the court or other
 7 persons or institutions?
- 8 ((5-)) If your answers to either number
 9 6. ((3)) 4 or number ((4)) 5 is yes, is it
 10 in the best interests of the defendant
 11 and others that the defendant be
 12 placed in treatment that is less
 13 restrictive than detention in a state
 14 mental hospital?

15 **Sec. 3.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read
 16 as follows:

17 (1) When the department performs a risk assessment pursuant to RCW
 18 9.94A.500, or to determine a person's conditions of supervision, the
 19 risk assessment shall classify the offender or a probationer sentenced
 20 in superior court into one of at least four risk categories.

21 (2) The department shall supervise every offender sentenced to a
 22 term of community custody and every misdemeanor and gross misdemeanor
 23 probationer ordered by a superior court to probation under the
 24 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
 25 9.95.210:

26 (a) Whose risk assessment places that offender or probationer in
 27 one of the two highest risk categories; or

28 (b) Regardless of the offender's or probationer's risk category if:

29 (i) The offender's or probationer's current conviction is for:

- 30 (A) A sex offense;
- 31 (B) A violent offense;
- 32 (C) A crime against persons as defined in RCW 9.94A.411;
- 33 (D) A felony that is domestic violence as defined in RCW 10.99.020;
- 34 (E) A violation of RCW 9A.52.025 (residential burglary);

35 (F) A violation of, or an attempt, solicitation, or conspiracy to
 36 violate, RCW 69.50.401 by manufacture or delivery or possession with
 37 intent to deliver methamphetamine; or

1 (G) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

3 (ii) The offender or probationer has a prior conviction for:

4 (A) A sex offense;

5 (B) A violent offense;

6 (C) A crime against persons as defined in RCW 9.94A.411;

7 (D) A felony that is domestic violence as defined in RCW 10.99.020;

8 (E) A violation of RCW 9A.52.025 (residential burglary);

9 (F) A violation of, or an attempt, solicitation, or conspiracy to
10 violate, RCW 69.50.401 by manufacture or delivery or possession with
11 intent to deliver methamphetamine; or

12 (G) A violation of, or an attempt, solicitation, or conspiracy to
13 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

14 (iii) The conditions of the offender's community custody or the
15 probationer's supervision include chemical dependency treatment;

16 (iv) The offender was found guilty and mentally ill under section
17 1 of this act;

18 (v) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

19 ~~((+v))~~ (vi) The offender is subject to supervision pursuant to RCW
20 9.94A.745.

21 (3) The department is not authorized to, and may not, supervise any
22 offender sentenced to a term of community custody or any probationer
23 unless the offender or probationer is one for whom supervision is
24 required under subsection (2) of this section.

25 (4) This section expires July 1, 2010.

26 NEW SECTION. Sec. 4. This act takes effect August 1, 2009.

--- END ---