
SENATE BILL 5253

State of Washington

61st Legislature

2009 Regular Session

By Senators Carrell, Brandland, and Swecker

Read first time 01/19/09. Referred to Committee on Human Services & Corrections.

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 defendant found guilty and mentally ill or whose plea of
9 guilty and mentally ill is accepted pursuant to subsection 2 of this
10 section may have any sentence imposed that may lawfully be imposed on
11 any defendant convicted of the same offense. The defendant shall be
12 committed into the custody of the department of corrections and shall
13 be considered guilty for all other purposes of law. The department of
14 corrections shall make available, within available resources, the
15 treatment as is psychiatrically indicated for the defendant.

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

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

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

- | | | |
|----|----|--------------------------------------|
| 26 | | answer |
| 27 | | yes or no |
| 28 | 1. | Did the defendant commit the act |
| 29 | | charged? |
| 30 | 2. | If your answer to number 1 is yes, |
| 31 | | do you acquit him or her because of |
| 32 | | insanity existing at the time of the |
| 33 | | act charged? |

1 3. If your answer to number 2 is no,
2 has the defendant proven that he or
3 she was mentally ill at the time of
4 the commission of the offense?
5 4. If your answer to number 2 is yes, is
6 the defendant a substantial danger to
7 other persons unless kept under
8 further control by the court or other
9 persons or institutions?
10 ((4.)) If your answer to number 2 is yes,
11 5. does the defendant present a
12 substantial likelihood of committing
13 criminal acts jeopardizing public
14 safety or security unless kept under
15 further control by the court or other
16 persons or institutions?
17 ((5.)) If your answers to either number
18 6. ((3)) 4 or number ((4)) 5 is yes, is it
19 in the best interests of the defendant
20 and others that the defendant be
21 placed in treatment that is less
22 restrictive than detention in a state
23 mental hospital?

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

26 (1) When the department performs a risk assessment pursuant to RCW
27 9.94A.500, or to determine a person's conditions of supervision, the
28 risk assessment shall classify the offender or a probationer sentenced
29 in superior court into one of at least four risk categories.

30 (2) The department shall supervise every offender sentenced to a
31 term of community custody and every misdemeanor and gross misdemeanor
32 probationer ordered by a superior court to probation under the
33 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
34 9.95.210:

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

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

1 (i) The offender's or probationer's current conviction is for:
2 (A) A sex offense;
3 (B) A violent offense;
4 (C) A crime against persons as defined in RCW 9.94A.411;
5 (D) A felony that is domestic violence as defined in RCW 10.99.020;
6 (E) A violation of RCW 9A.52.025 (residential burglary);
7 (F) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.401 by manufacture or delivery or possession with
9 intent to deliver methamphetamine; or

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

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

13 (A) A sex offense;

14 (B) A violent offense;

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

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

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

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

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

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

25 (iv) The defendant was found guilty and mentally ill under section
26 1 of this act;

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

28 ~~((+v))~~ (vi) The offender is subject to supervision pursuant to RCW
29 9.94A.745.

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

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

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

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