

# SENATE BILL REPORT

## SB 5151

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As of February 5, 2013

**Title:** An act relating to criminal defendants who are guilty and mentally ill.

**Brief Description:** Authorizing criminal defendants to plead "guilty and mentally ill."

**Sponsors:** Senators Carrell, Pearson and Keiser.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/29/13.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

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

**Background:** Criminal insanity is an affirmative defense in Washington. The defense is established if a defendant proves, by a preponderance of the evidence, that at the time of the 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 the defendant was unable to tell right from wrong with reference to the particular act charged.

If a defendant is found not guilty by reason of insanity (NGRI), the defendant may be committed at a state hospital, if the judge or jury determines that 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 defendant was acquitted by reason of insanity.

Guilty and mentally ill is an alternative sentencing verdict which was developed following the attempted assassination of President Ronald Reagan in 1981, by a man who was later found NGRI. 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.

**Summary of Bill:** When a defendant pleads NGRI, the defendant may be found guilty and mentally ill if:

- the judge or jury finds that the state proved the defendant guilty of the crime charged;
- the defendant failed to prove the insanity defense; and

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- the state or defendant proved that the defendant was mentally ill at the time of the offense and that the defendant's actions at the time of the offense were affected by symptoms of mental illness.

The court may accept a plea of guilty and mentally ill if the defendant has undergone an evaluation by a psychologist or psychiatrist, and the court finds after a hearing that there is a factual basis for the plea. A defendant who is found guilty and mentally ill may receive any sentence which could have legally been imposed on the defendant if the defendant was found guilty of the offense.

A defendant who is found guilty and mentally ill must be placed under the jurisdiction of the Department of Corrections (DOC). DOC must supervise a defendant sentenced to community custody who is found guilty and mentally ill regardless of risk classification.

**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:** PRO: This is part of a suite of bills. Some patients are not appropriate to be placed at a state hospital. We should think about a more secure area for patients that threaten public safety.

CON: The movement should be to move people with mental illness out of the criminal justice system. This bill would take us in the opposite direction. We would support the alternative of a more secure setting within the hospital. This bill will catch people who the bill is not intended for, people who should receive care in other settings. There is no guarantee of treatment. Jurors will be deceived into thinking treatment will be provided. This bill would be confusing to juries. National organizations have criticized these laws in other states. A person found guilty and mentally ill would be treated exactly the same as someone found guilty. This bill addresses a nonexistent problem. The insanity defense is rarely used, and is even more rarely successful. This bill would waste supervision resources that should be spent on high-risk and dangerous individuals. Mental illness alone is not a predictor of violence.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor.

CON: Seth Dawson, National Alliance on Mental Illness (NAMI), NAMI WA; C. Wesley Richards, WA Assn. of Criminal Defense Attorneys, WA Defender Assn.; David Lord, Disability Rights WA.