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SENATE BILL 5151

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Carrell, Pearson, and Keiser

Read first time 01/21/13. 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; 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 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 and that the symptoms of the defendant's mental illness  
17 affected the defendant's decision making at the time of the commission  
18 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 defendant found guilty and mentally ill or whose plea of  
12 guilty and mentally ill is accepted pursuant to subsection (2) of this  
13 section may have any sentence imposed that may lawfully be imposed on  
14 any defendant convicted of the same offense, including a standard range  
15 or an exceptional sentence.

16 (4) The defendant 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" mean 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 no |
| 30 | 1. Did the defendant commit the act   |           |
| 31 | charged?                              | .....     |
| 32 | 2. If your answer to number 1 is yes, |           |
| 33 | do you acquit him or her because of   |           |
| 34 | insanity existing at the time of the  |           |
| 35 | act charged?                          | .....     |



1 (ii) A prior conviction for a repetitive domestic violence offense  
2 or domestic violence felony offense where domestic violence has been  
3 plead and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
5 department pursuant to this section shall be placed on community  
6 custody.

7 (3) The department shall supervise every felony offender sentenced  
8 to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk  
9 assessment classifies the offender as one who is at a high risk to  
10 reoffend.

11 (4) Notwithstanding any other provision of this section, the  
12 department shall supervise an offender sentenced to community custody  
13 regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious violent  
15 offense and was sentenced to a term of community custody pursuant to  
16 RCW 9.94A.701, 9.94A.702, or 9.94A.507;

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

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

21 (d) Has a current conviction for violating RCW 9A.44.132(1)  
22 (failure to register) and was sentenced to a term of community custody  
23 pursuant to RCW 9.94A.701;

24 (e) Has a current conviction for a domestic violence felony offense  
25 where domestic violence has been plead and proven after August 1, 2011,  
26 and a prior conviction for a repetitive domestic violence offense or  
27 domestic violence felony offense where domestic violence has been plead  
28 and proven after August 1, 2011;

29 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or  
30 9.94A.670; (~~(or)~~)

31 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

32 (h) Was found guilty and mentally ill under section 1 of this act.

33 (5) The department is not authorized to, and may not, supervise any  
34 offender sentenced to a term of community custody or any probationer  
35 unless the offender or probationer is one for whom supervision is  
36 required under this section or RCW 9.94A.5011.

37 (6) The department shall conduct a risk assessment for every felony

1 offender sentenced to a term of community custody who may be subject to  
2 supervision under this section or RCW 9.94A.5011.

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