
SENATE BILL 6310

State of Washington

61st Legislature

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By Senators Carrell, King, Hewitt, and Roach

Read first time 01/12/10. 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 new sections to
3 chapter 10.77 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) A defendant who offers a timely defense
6 of insanity under RCW 10.77.030 may be found "guilty and mentally ill"
7 at trial if the trier of fact finds that:

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

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

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

17 (2) For the purposes of this section, the terms "mental illness"
18 and "mentally ill" refer to a substantial disorder of thought, mood, or

1 behavior that has a substantial adverse effect on the defendant's
2 cognitive or volitional functions, but not rising to the level of
3 insanity under RCW 9A.12.010.

4 NEW SECTION. **Sec. 2.** A defendant who waives the right to trial
5 may plead guilty and mentally ill under section 1 of this act. No plea
6 of guilty and mentally ill shall be accepted by the court unless the
7 defendant has undergone examination by a psychologist or psychiatrist,
8 and following a review of the medical evidence and a hearing on the
9 defendant's mental condition, the court is satisfied that there is a
10 factual basis for the plea of guilty and mentally ill. If the court
11 refuses to accept a defendant's plea of guilty and mentally ill, the
12 defendant shall be permitted to withdraw the plea.

13 NEW SECTION. **Sec. 3.** (1) A defendant who is found guilty and
14 mentally ill under section 1 of this act may receive any sentence,
15 including a standard range sentence or an exceptional sentence, which
16 could have lawfully been imposed if the defendant were found guilty of
17 the same offense. For the purposes of sentencing, a finding of guilty
18 and mentally ill shall be treated as equivalent to a finding of guilty.

19 (2) A defendant who has been found guilty and mentally ill shall be
20 placed under the jurisdiction of the department of corrections. If the
21 defendant's sentence calls for a term of confinement, the defendant
22 shall be committed to the custody of the department of social and
23 health services, which shall place the defendant in a secure mental
24 health facility for an initial period of mental health treatment and
25 evaluation. Following this period, the defendant shall be discharged
26 by the department of social and health services to the custody of the
27 department of corrections for the balance of the defendant's sentence.

28 (3) A defendant in the custody of the department of social and
29 health services who has been found guilty and mentally ill who
30 cooperates with treatment may remain in the custody of the department
31 of social and health services for only such time as is reasonably
32 necessary to stabilize the defendant's condition and determine an
33 appropriate course of treatment for the defendant in a correctional
34 setting. If the defendant refuses to cooperate with treatment, the
35 defendant must be discharged to the custody of the department of

1 corrections. The decision to discharge the defendant shall be made at
2 the sole discretion of the department of social and health services.

3 (4) The department of social and health services must discharge a
4 defendant found guilty and mentally ill to the department of
5 corrections within ninety days, or submit written justification to the
6 department of corrections at ninety-day intervals explaining why
7 continued treatment is necessary in order to achieve the goals stated
8 in subsection (3) of this section. Lack of success in treatment which
9 is caused by a lack of cooperation on the part of the defendant is not
10 justification for a failure to discharge the defendant.

11 (5) When a defendant who has been found guilty and mentally ill is
12 discharged to the custody of the department of corrections, the
13 department of social and health services shall provide the department
14 of corrections with a report describing the defendant's condition and
15 recommended course of treatment, and shall provide the department of
16 corrections with any other medical information it requests relating to
17 the treatment of the defendant.

18 (6) A defendant who has been found guilty and mentally ill shall
19 not be confined for longer than the confinement term of the defendant's
20 sentence, and shall be eligible for earned release time under RCW
21 9.94A.728, while in the custody of the department of social and health
22 services, in a manner to be determined by the department of corrections
23 and the department of social and health services.

24 (7) No defendant who has been found guilty and mentally ill shall
25 be eligible for unescorted privileges on or off the grounds of a
26 facility operated by the department of social and health services
27 without written permission from the secretary of the department of
28 corrections or the secretary's designee.

29 (8) The department of corrections and department of social and
30 health services may adopt rules or make agreements necessary for the
31 implementation of this section.

32 **Sec. 4.** RCW 10.77.040 and 1998 c 297 s 33 are each amended to read
33 as follows:

34 Whenever the issue of insanity is submitted to the jury, the court
35 shall instruct the jury to return a special verdict in substantially
36 the following form:

1		answer
2		yes or no
3	1.	Did the defendant commit the act
4		charged?
5	2.	If your answer to number 1 is yes,
6		do you acquit him or her because of
7		insanity existing at the time of the
8		act charged?
9	3.	<u>If your answer to number 2 is no,</u>
10		<u>has the defendant or the state proven</u>
11		<u>by a preponderance of the evidence</u>
12		<u>that the defendant was mentally ill at</u>
13		<u>the time of the commission of the</u>
14		<u>offense, and that the defendant's</u>
15		<u>actions at the time of the</u>
16		<u>commission of the offense were</u>
17		<u>affected by symptoms of mental</u>
18		<u>illness?</u>
19	4.	If your answer to number 2 is yes, is
20		the defendant a substantial danger to
21		other persons unless kept under
22		further control by the court or other
23		persons or institutions?
24	((4.))	If your answer to number 2 is yes,
25	5.	does the defendant present a
26		substantial likelihood of committing
27		criminal acts jeopardizing public
28		safety or security unless kept under
29		further control by the court or other
30		persons or institutions?
31	((5.))	If your answers to either number
32	6.	((3)) <u>4</u> or number ((4)) <u>5</u> is yes, is it
33		in the best interests of the defendant
34		and others that the defendant be
35		placed in treatment that is less
36		restrictive than detention in a state
37		mental hospital?

1 **Sec. 5.** RCW 9.94A.501 and 2009 c 376 s 2 are each amended to read
2 as follows:

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

8 (a) Offenders convicted of fourth degree assault, violation of a
9 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
10 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
11 and who also have a prior conviction for one or more of the following:

12 (i) A violent offense;

13 (ii) A sex offense;

14 (iii) A crime against a person as provided in RCW 9.94A.411;

15 (iv) Fourth degree assault; or

16 (v) Violation of a domestic violence court order; and

17 (b) Offenders convicted of:

18 (i) Sexual misconduct with a minor second degree;

19 (ii) Custodial sexual misconduct second degree;

20 (iii) Communication with a minor for immoral purposes; and

21 (iv) Failure to register pursuant to RCW 9A.44.130.

22 (2) Misdemeanor and gross misdemeanor offenders supervised by the
23 department pursuant to this section shall be placed on community
24 custody.

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

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

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

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

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

38 (d) Was found guilty and mentally ill under section 1 of this act;

1 (e) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or
2 (~~(e)~~) (f) Is subject to supervision pursuant to RCW 9.94A.745.

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

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

10 NEW SECTION. **Sec. 6.** Sections 1 through 3 of this act are each
11 added to chapter 10.77 RCW.

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