
SENATE BILL 5104

State of Washington 62nd Legislature 2011 Regular Session

By Senators Carrell, Stevens, and Schoesler

Read first time 01/13/11. Referred to Committee on Judiciary.

1 AN ACT Relating to criminal defendants who are guilty and mentally
2 ill; amending RCW 10.77.040; reenacting and amending RCW 9.94A.501; and
3 adding a new section to 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 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 2010 c 267 s 10 and 2010 c 224 s 3 are
25 each reenacted and amended to read as follows:

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

- 31 (a) Offenders convicted of fourth degree assault, violation of a
32 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
33 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
34 and who also have a prior conviction for one or more of the following:
35 (i) A violent offense;
36 (ii) A sex offense;
37 (iii) A crime against a person as provided in RCW 9.94A.411;

- 1 (iv) Fourth degree assault; or
2 (v) Violation of a domestic violence court order; and
3 (b) Offenders convicted of:
4 (i) Sexual misconduct with a minor second degree;
5 (ii) Custodial sexual misconduct second degree;
6 (iii) Communication with a minor for immoral purposes; and
7 (iv) Violation of RCW 9A.44.132(2) (failure to register).

8 (2) Misdemeanor and gross misdemeanor offenders supervised by the
9 department pursuant to this section shall be placed on community
10 custody.

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

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

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

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

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

24 (d) Has a current conviction for violating RCW 9A.44.132(1)
25 (failure to register);

26 (e) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
27 9.94A.670; (~~(e)~~)

28 (f) Is subject to supervision pursuant to RCW 9.94A.745; or

29 (g) Was found guilty and mentally ill under section 1 of this act.

30 (5) 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 (1), (2), (3), or (4) of this section.

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

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