

# SENATE BILL REPORT

## SB 5253

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As of February 9, 2009

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

**Brief Description:** Concerning criminal defendants who are guilty and mentally ill.

**Sponsors:** Senators Carrell, Brandland and Swecker.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/05/09.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

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

**Background:** The affirmative defense of not guilty by reason of insanity is established if a defendant proves, by a preponderance of the evidence, that at the time of the criminal 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 that the defendant was unable to tell right from wrong with reference to the particular act charged.

A defendant who has been found not guilty by reason of insanity may be committed for treatment to a state hospital if 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 person was acquitted by reason of insanity.

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:** A defendant who has offered a defense of insanity at trial may be found "guilty and mentally ill" if the judge or jury finds that the state has proven the defendant guilty of the crime charged, the defendant has failed to prove the asserted insanity defense, and finds that the defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of the offense. A court may also accept a plea of guilty and mentally ill from a defendant who waives trial.

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A verdict of guilty and mentally ill has the same sentencing consequences as a verdict of guilty. A defendant who is found guilty and mentally ill must be committed to the Department of Corrections, and must receive, within available resources, such treatment as is psychiatrically indicated.

**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: The Department of Corrections will provide better supervision than the Mental Health Division following release. Taking responsibility for crime is a positive step for persons with mental illness, who will be able to get treatment in prison. Holding persons with mental illnesses responsible for the crimes they commit makes sense for crime victims.

CON: This bill is an empty promise, because it doesn't provide any funding for treatment for a mentally ill person in prison or following release. This bill stigmatizes the mentally ill. The new verdict would not be limited to crimes of violence. The Department of Corrections provides the wrong kind of treatment and the wrong kind of supervision.

OTHER: This is not the year to pursue this idea, which needs additional thought and study.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor; Jim Adams, National Alliance on Mental Illness; Jenny Weiland Warp, Families & Friends of Violent Crime Victims; Dan Satterburg, King County Prosecutor.

CON: Eileen Farley, Northwest Defenders Association.

OTHER: Tom McBride, Washington Association of Prosecuting Attorneys; Mary Heitzman, citizen.