SENATE BILL REPORT
SB 6310

As of January 18, 2010

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, King, Hewitt and Roach.

Brief History:
Committee Activity: Human Services & Corrections: 1/15/10.

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 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 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 not guilty 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: When a defendant pleads not guilty by reason of insanity, the defendant may be found guilty and mentally ill if: 1) the judge or jury finds that the state has proven the defendant guilty of the crime charged; 2) the defendant has failed to prove the insanity defense; and 3) the state or defendant has proven that the defendant was mentally ill at the

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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 is eligible to receive any sentence which could have legally been imposed on the defendant if the defendant were found guilty of the offense.

A defendant who has been found guilty and mentally ill must be placed under the jurisdiction of the Department of Corrections (DOC), but must be committed to the custody of the Department of Social and Health Services (DSHS) for an initial period of evaluation and treatment. The defendant may remain in the custody of DSHS only for as long as reasonably necessary to stabilize the defendant's condition and to determine a course of treatment for the defendant. If the defendant refuses to cooperate with medication or treatment, the defendant must be immediately discharged into the custody of DOC. The decision to discharge the defendant to the custody of DOC is at the sole discretion of DSHS. If DSHS has not discharged the defendant to DOC within 90 days, written justification must be submitted at 90-day intervals to explain why continued treatment is necessary in order to achieve the goals of stabilization and treatment.

DOC must supervise a defendant sentenced to community custody who has been found guilty and mentally ill regardless of risk classification.

Appropriation: None.

Fiscal Note: Requested on January 1, 2010.

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: There are just a handful of trials involving the insanity defense. NGRI should be applied where it is appropriate, and giving the court an additional choice will lead to better decision making in the rare instances in which this verdict would apply.

CON: This measure would perpetuate stigma against mental illness. Persons with mental illness are no more likely to commit violent crimes than anyone else. We should invest in treatment and recovery, not hemorrhage dollars into the criminal justice system. Do not define mental illness as the result of actions of individuals in high profile cases. This measure was not recommended by the State Hospital Safety Review Panel. Persons labeled as mentally ill spend more time in incarceration, which constitutes imprisonment because of mental illness. This measure is broad, and would apply to misdemeanors. The system criminalizes mental illness because it fails to listen to families and civilly commit mentally ill individuals upstream. Giving a criminal record to a person with mental illness creates a barrier to housing and employment. If this measure has a limited effect, why do it? Clinical judgments should be left to professionals. This measure would discourage appropriate usage of the NGRI plea, and will confuse juries.

OTHER: DOC already has the ability and capacity to give appropriate treatment to mentally ill offenders.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys.

CON: Helen Nilon, Mental Health Action; David Lovell, University of Washington; Jim Heitzman, Mary Heitzman, Dorothy Trueblood, citizens; David Lord, Disability Rights Washington; Eileen Farley, Northwest Defender Association; Eleanor Owen, Nathan Lever, National Alliance on Mental Illness Washington; Shankar Narayan, ACLU.

OTHER: John Lane, Office of the Governor.