

SENATE BILL REPORT

ESB 5222

As Passed Senate, March 16, 2005

Title: An act relating to the insanity defense.

Brief Description: Changing provisions relating to the insanity defense.

Sponsors: Senators Esser and Doumit.

Brief History:

Committee Activity: Judiciary: 2/3/05, 2/22/05 [DPA].

Passed Senate: 3/16/05, 47-1.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, McCaslin, Rasmussen and Thibaudeau.

Staff: Lilah Amos (786-7429)

Background: A criminal defendant who pleads not guilty by reason of insanity is entitled to retain expert witnesses to testify about his mental state. The prosecution is also entitled to have an expert conduct a court-ordered mental status examination of the defendant. During these examinations, Washington law gives the defendant the right to have an attorney present and to refuse to answer any question if the defendant believes the answer may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

The fifth amendment to United State Constitution and the Washington State Constitution, Article I, Section 9, both give criminal defendants the right against self-incrimination. The Washington Supreme Court has ruled that when a defendant raises an insanity defense, the defendant waives his or her constitutional rights against self-incrimination. Washington statutes, however, provide no similar waiver, and the Washington Supreme Court has ruled that a defendant who raises an insanity defense does not waive the statutory privilege against self-incrimination.

Summary of Bill: The defendant's statutory privilege against self-incrimination in mental status examinations pursuant to Chapter 10.77 RCW is removed. If the defendant refuses to answer questions or participate in good faith in an examination conducted in response to the defendant's claim of insanity, the court must exclude from evidence any testimony from an expert retained by the defendant. The effective date is ninety days after adjournment of the session.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill assures fairness in criminal cases where the defendant raises an insanity defense. It prevents the use of the insanity defense as both a sword, an affirmative defense to the crime, and a shield, preventing the state from presenting a balanced view of the defendant's mental status at the time of the crime. The bill addresses an issue recently identified by the Washington Supreme Court.

Testimony Against: The language pertaining to good faith refusal to answer could result in a defendant who is truly insane being deprived of expert witnesses who can testify to his mental state at the time of the offense. This statute could be used in diminished capacity defenses as well as insanity defenses.

Who Testified: PRO: Senator Luke Esser, prime sponsor; Roger Davidheiser and Jim Konat, King County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys.

CON: Michael Hanbey, Washington Defender's Association and Washington Association of Criminal Defense Lawyers.