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**SUBSTITUTE SENATE BILL 5293**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege, and Wilson, C.)

AN ACT Relating to mental health sentencing alternatives; amending RCW 9.94A.501, 9.94A.505, 9.94A.633, and 9.94A.6332; reenacting and amending RCW 9.94A.701; adding a new section to chapter 9.94A RCW; creating a new section; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1) A defendant is eligible for the mental health sentencing alternative if:

(a) The defendant is convicted of a felony that is not a serious violent offense or sex offense;

(b) The defendant is diagnosed with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;

(c) The defendant and the community would benefit from supervision and treatment, as determined by the judge; and

(d) The defendant is willing to participate in the sentencing alternative.

(2) A motion for a sentence under this section may be made by any party or the court, but is contingent upon the defendant's agreement to participate in the sentencing alternative. To determine whether the defendant has a serious mental illness, the court may rely on information including reports completed pursuant to chapters 71.05 and 10.77 RCW, or other mental health professional as defined in RCW 71.05.020, or other information and records related to mental health services. Information and records relating to mental health services must be handled consistently with RCW 9.94A.500(2). If insufficient information is available to determine whether a defendant has a serious mental illness, the court may order an examination of the defendant.

(3) To assist the court in its determination, the department shall provide a written report, which shall be in the form of a presentence investigation. Such report may be ordered by the court on the motion of a party prior to conviction if such a report will facilitate negotiations. The court may waive the production of this report if sufficient information is available to the court to make a determination under subsection (4) of this section. The report must contain:

(a) A proposed treatment plan for the defendant's mental illness, including at a minimum:

(i) The name and address of the treatment provider that has agreed to provide treatment to the defendant, including an intake evaluation, a psychiatric evaluation, and development of an individualized plan of treatment which shall be submitted as soon as possible to the department and the court; and

(ii) An agreement by the treatment provider to monitor the progress of the defendant on the sentencing alternative and notify the department and the court at any time during the duration of the order if reasonable efforts to engage the defendant fail to produce substantial compliance with court-ordered treatment conditions;

(b) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(c) Recommended crime-related prohibitions and affirmative conditions; and

(d) A release of information, signed by the defendant, allowing the parties and the department to confirm components of the treatment and monitoring plan.

(4) After consideration of all available information and determining whether the defendant is eligible, the court shall consider whether the defendant and the community will benefit from the use of this sentencing alternative. The court shall consider the victim's opinion whether the defendant should receive a sentence under this section. If the sentencing court determines that a sentence under this section is appropriate, the court shall waive imposition of the sentence within the standard range. The court shall impose a term of community custody between 12 and 24 months if the midpoint of the defendant's standard range sentence is less than or equal to 36 months, and a term of community custody between 12 months and 36 months if the midpoint of the defendant's standard range sentence is longer than 36 months. The actual length of community custody within these ranges shall be at the discretion of the court.

(5) If the court imposes an alternative sentence under this section, the department shall assign a community corrections officer to supervise the defendant. The department shall provide a community corrections officer assigned under this section with appropriate training in mental health to be determined by the department.

(6)(a) The court may schedule progress hearings for the defendant to evaluate the defendant's progress in treatment and compliance with conditions of supervision.

(b) Before any progress hearing, the department and the treatment provider shall each submit a written report informing the parties of the defendant's progress and compliance with treatment. At the progress hearing, the court shall hear from the parties regarding the defendant's compliance and may modify the conditions of community custody if the modification serves the interests of justice and the best interests of the defendant.

(7)(a) If the court imposes this sentencing alternative, the court shall impose conditions under RCW 9.94A.703 that do not conflict with this section and may impose any additional conditions recommended by any of the written reports regarding the defendant.

(b) The court shall impose specific treatment conditions:

(i) Meet with treatment providers and follow the recommendations provided in the individualized treatment plan as initially constituted or subsequently modified by the treatment provider;

(ii) Take medications as prescribed, including monitoring of compliance with medication if needed;

(iii) Refrain from using alcohol and nonprescribed controlled substances if the defendant has a diagnosis of a substance use disorder. The court may order the department to monitor for the use of alcohol or nonprescribed controlled substances if the court prohibits use of those substances.

(8) Treatment issues arising during supervision shall be discussed collaboratively. The treatment provider, community corrections officer, and any representative of the person's medical assistance plan shall jointly determine intervention for violation of a treatment condition. The community corrections officer shall have the authority to address the violation independently if:

(a) The violation is safety related with respect to the defendant or others;

(b) The treatment violation consists of decompensation related to psychosis that presents a risk to the community or the defendant and cannot be mitigated by community intervention. The community corrections officer may intervene with available resources such as a designated crisis responder; or

(c) The violation relates to a standard condition for supervision.

(9) The community corrections officer, treatment provider, and any engaged representative of the defendant's medical assistance plan should collaborate prior to a progress update to the court. Required treatment interventions taken between court progress hearings shall be reported to the court as a part of the regular progress update to the court.

(10) The court may schedule a review hearing for a defendant under this sentencing alternative at any time to evaluate the defendant's progress with treatment or to determine if any violations have occurred.

(a) At a review hearing the court may modify the terms of the community custody or impose sanctions if the court finds that the conditions have been violated or that different or additional terms are in the best interest of the defendant.

(b) The court may order the defendant to serve a term of total or partial confinement for violating the terms of community custody or failing to make satisfactory progress in treatment.

(11) The court shall schedule a termination hearing one month prior to the end of the defendant's community custody. A termination hearing may also be scheduled if the department or the state reports that the defendant has violated the terms of community custody imposed by the court. At that hearing, the court may:

(a) Authorize the department to terminate the defendant's community custody status on the expiration date; or

(b) Continue the hearing to a date before the expiration date of community custody, with or modifying the conditions of community custody; or

(c) Revoke the sentencing alternative and impose a term of total or partial confinement within the standard sentence range or impose an exceptional sentence below the standard sentencing range if compelling reasons are found by the court or the parties agree to the downward departure. The defendant shall receive credit for time served while supervised in the community against any term of total confinement. The court must issue written findings indicating a substantial and compelling reason to revoke this sentencing alternative.

(12) For the purposes of this section:

(a) "Serious mental illness" means a mental, behavioral, or emotional disorder resulting in a serious functional impairment, which substantially interferes with or limits one or more major life activities.

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

**Sec.**  RCW 9.94A.501 and 2020 c 275 s 1 are each amended to read as follows:

(1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

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

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

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

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

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

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

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

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

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, ((~~or~~)) 9.94A.711, or section 1 of this act;

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

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through ((~~(8)~~)) (9), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

(9) The period of time the department is authorized to supervise an offender under this section may be reduced by the earned award of supervision compliance credit pursuant to RCW 9.94A.717.

**Sec.**  RCW 9.94A.505 and 2019 c 191 s 3 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) Section 1 of this act, relating to the mental health sentencing alternative;

(x) RCW 9.94A.507, relating to certain sex offenses;

((~~(x)~~)) (xi) RCW 9.94A.535, relating to exceptional sentences;

((~~(xi)~~)) (xii) RCW 9.94A.589, relating to consecutive and concurrent sentences;

((~~(xii)~~)) (xiii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

((~~(xiii)~~)) (xiv) RCW 9.94A.711, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

**Sec.**  RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each amended to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to sixty days' confinement for each violation or by the department with up to thirty days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

(d) If the offender was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(e) If the offender was sentenced under the mental health sentencing alternative set out in section 1 of this act, the offender may be sanctioned in accordance with that section.

(f) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

((~~(f)~~)) (g) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110(1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state.

**Sec.**  RCW 9.94A.6332 and 2014 c 130 s 3 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If the offender was sentenced under the mental health sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to section 1 of this act.

(5) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

((~~(5)~~)) (6) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

((~~(6)~~)) (7) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

((~~(7)~~)) (8) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

((~~(8)~~)) (9) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

**Sec.**  RCW 9.94A.701 and 2010 c 267 s 11 and 2010 c 224 s 5 are each reenacted and amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507; or

(b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or

(d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If an offender is sentenced under the parenting sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.655.

(8) If the offender is sentenced under the mental health sentencing alternative, the court shall impose a term of community custody as provided in section 1 of this act.

(9) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

((~~(9)~~)) (10) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

NEW SECTION. **Sec.**  This act applies to sentences imposed on or after the effective date of this section.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 20, 2021.

**--- END ---**