

SENATE BILL REPORT

SB 5293

As of February 7, 2021

Title: An act relating to mental health sentencing alternatives.

Brief Description: Addressing mental health sentencing alternatives.

Sponsors: Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 2/08/21.

Brief Summary of Bill

- Creates a mental disability sentencing alternative allowing imposition of a period of community custody and mental health treatment in lieu of a standard range sentence for certain defendants.
- Provides conditions of supervision for persons participating in the sentencing alternative.
- Allows the court to schedule progress hearings to monitor the person during the sentencing alternative.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: Washington uses determinate sentencing for felony offenses, in which a standard range for the offense is determined by cross referencing the seriousness level of the offense, provided by statute, with an offender score based on the criminal history of the defendant. The judge must impose a sentence within the standard range for the offense unless the court finds there are substantial and compelling reasons to impose an exceptional sentence outside the standard range. Notwithstanding the standard range sentence, a

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number of other factors may apply to increase mandatory sentence terms for a defendant, including sentencing enhancements, mandatory minimum sentencing terms, determinate plus sentencing, and persistent offender sentencing.

Certain sentencing alternatives have been enacted which allow the court to waive the usual standard range without finding grounds for an exceptional sentence. These alternatives frequently allow a term of community custody to be imposed in lieu of confinement and may require the person to engage in a form of treatment. Sentencing alternatives for adult felony defendants include the First-Time Offender Waiver, Parenting Sentencing Alternative, Drug Offender Sentencing Alternative, and Special Sex Offender Sentencing Alternative.

Persons on community custody are supervised by community corrections officers. With the exception of persons who receive sentencing alternatives, Washington limits community supervision to persons who are classified high risk. The law provides procedures for persons sentenced to community custody which include mandatory conditions of supervision, review, imposition of additional conditions, and structured revocation that do not call for direct court supervision or review.

Summary of Bill: A mental disability mandated observation and treatment alternative to incarceration (MDMOTAI) is created, which allows a sentencing court to waive the standard range and impose a term of community custody if the defendant is:

- convicted of a felony which is not a serious violent offense;
- diagnosed with a severe and persistent mental health issue;
- able to benefit from supervision and treatment;
- subject to a sentence which could include incarceration; and
- willing to participate in the sentencing alternative.

Any party or the court may move for imposition of a MDMOTAI, but the defendant must be willing. The court may order an examination of the defendant or rely on existing health records if sufficient information is available. Before imposition of a MDMOTAI, a written report must be provided in the form of a presentence investigation containing:

- a proposed treatment plan, proposed supervision plan, or both;
- the length of treatment and name and address of treatment providers;
- a proposed monitoring plan;
- any crime-related prohibitions and affirmative conditions; and
- a signed release of information allowing parties to confirm components of the treatment and monitoring plan.

The court must impose 12 to 24 months of community custody if the standard range sentence is less than 36 months, and 12-36 months of community custody for longer sentencing ranges. The defendant must be assigned a community corrections officer with mental health training, or to a special needs unit or behavioral health unit if one exists. The court may impose conditions such as:

- obtain a substance use disorder assessment and comply with follow-up treatment;
- comply with urinalysis or breathalyzer monitoring if needed;
- comply with mental health treatment recommendations including taking medication and medication monitoring;
- devote time to specific employment, education, or training;
- remain within prescribed geographic boundaries;
- provide releases of information;
- abstain from alcohol and unprescribed drugs.

The court may assess a supervision charge of \$30 per month against the defendant if the defendant is financially able. No supervision fee may be charged if the defendant is on public assistance.

The court must schedule regular progress hearings for the defendant, as regularly as needed to meet the needs of the defendant. The Department of Corrections and any treatment provider must provide a report to the court before each hearing. The court may modify the conditions of community custody at a progress hearing if the modification serves the interests of justice and the best interests of the defendant. The court must schedule a termination hearing one month before the end of supervision. If the court revokes the MDMOTAI it may impose a sentence of confinement within the standard range sentence or an exceptional sentence below the standard range, with credit for time served for time served in the community.

Costs for examinations or the preparation of treatment plans may be paid out of the Criminal Justice Treatment Account.

Appropriation: None.

Fiscal Note: Requested on February 5, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 20, 2021.