

HOUSE BILL REPORT

2SSB 5293

As Passed House:

April 7, 2021

Title: An act relating to mental health sentencing alternatives.

Brief Description: Addressing mental health sentencing alternatives.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege and Wilson, C.).

Brief History:

Committee Activity:

Public Safety: 3/19/21, 3/25/21 [DP].

Floor Activity:

Passed House: 4/7/21, 88-9.

Brief Summary of Second Substitute Bill

- Creates a mental health sentencing alternative allowing for imposition of a term of community custody and treatment in place of confinement for certain defendants diagnosed with serious mental illness.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

Staff: Omeara Harrington (786-7136).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Felony Sentencing. Sentences for most felony offenses are determined by reference to a sentencing grid established in the Sentencing Reform Act (SRA). The sentencing grid provides a standard range of months of confinement, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history.

In some circumstances, the SRA provides sentencing courts discretion to order an alternative sentence in place of a standard sentence. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment and to submit to community custody or a form of partial confinement. Several sentencing alternatives are established within the SRA, including the Drug Offender Sentencing Alternative, the Special Sex Offender Sentencing Alternative, and the Parenting Sentencing Alternative.

Community Custody. Community custody is a portion of a sentence served in the community, subject to conditions imposed by the court and the Department of Corrections (DOC). The DOC supervises certain categories of persons sentenced to community custody, including those sentenced to community custody as part of a sentencing alternative. If a person serving an alternative sentence violates the conditions of community custody, he or she is subject to processes and sanctions outlined in the sentencing alternative, which may include modification of conditions or revocation of the alternative sentence and imposition of a standard sentence.

Summary of Bill:

The Mental Health Sentencing Alternative. A mental health sentencing alternative (MHSA) is created in the SRA. If the sentencing court determines that the MHSA is appropriate, the court must waive imposition of the standard range sentence and instead impose a term of community custody and treatment.

Eligibility for the MHSA. A defendant is eligible for the MHSA if:

- the defendant is convicted of a felony that is not a serious violent offense or sex offense;
- the defendant is diagnosed with a serious mental illness at the time of sentencing. A "serious mental illness" is a mental, behavioral, or emotional disorder resulting in serious functional impairment that substantially interferes with or limits one or more major life activities;
- the defendant and the community would benefit from the defendant's supervision and treatment; and
- the defendant is willing to participate in the sentencing alternative.

A motion to impose the MHSA may be brought by any party or the court. The court may rely on existing health records to determine whether the defendant has a serious mental

illness, or if sufficient information is not available, the court may order an examination of the defendant. To assist the court in making its eligibility determination, the DOC must prepare a presentence investigation containing: a proposed treatment plan, identifying the treatment provider and an individualized treatment plan; a proposed monitoring plan, including lifestyle and living condition requirements, and monitoring by family members and others; recommended crime-related prohibitions and affirmative conditions; and a release of information, signed by the defendant, allowing parties and the DOC to confirm components of the treatment and monitoring plan. The court may waive the presentence investigation if it has sufficient information to make its determination.

In making its determination, the court must consider whether the defendant and the community will benefit from the use of the sentencing alternative, as well as the victim's opinion as to whether the MHSA should be imposed.

Requirements of the MHSA. If the court determines that the defendant is eligible for the MHSA, the court must waive imposition of the standard sentence and impose a term of community custody that is between 12 and 24 months, if the midpoint of the defendant's standard sentence range is 36 months or less, and between 12 and 36 months, if the standard sentence range is longer than 36 months. The court must additionally impose appropriate conditions, including treatment-related conditions to: meet with treatment providers and follow recommendations provided in the individualized treatment plan; take prescribed medications; and refrain from using alcohol and nonprescribed drugs. The DOC must assign a community corrections officer with appropriate mental health training to supervise the defendant under the MHSA.

Monitoring and Enforcement Under the MHSA. The court may schedule progress hearings to evaluate the defendant's progress in treatment and compliance with conditions of supervision. Prior to any progress hearing, the DOC and the treatment provider must each submit a written report informing the parties of the defendant's progress and compliance with treatment. At the progress hearing, the court must 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.

Treatment issues that arise during supervision must be discussed collaboratively among the treatment provider, the community corrections officer, and a representative of the person's medical assistance plan. In general, decisions regarding intervention for violation of a treatment condition must be made jointly; however, the community corrections officer may address a violation independently if it is a safety-related violation, the violation is from decompensation-related psychosis and presents a risk to the community or defendant that cannot be mitigated by community intervention, or the violation relates to a standard supervision condition. A report of any treatment interventions must be included in progress updates to the court.

Additionally, the court may schedule a review hearing at any time to evaluate the

defendant's progress with treatment and to determine if any violations have occurred. At a review hearing, the court may modify the terms of community custody or impose sanctions. In the event of a violation of community custody terms or failure to make satisfactory progress in treatment, the court may order the defendant to serve a term of total or partial confinement.

The court must schedule a termination hearing one month prior to the end of the defendant's term of community custody. The court may additionally schedule a termination hearing upon report of the defendant's violation of community custody terms. At the hearing, the court may:

- authorize the DOC to terminate the defendant's community custody status on the expiration date;
- continue the hearing to a date before the expiration date, with or without modifying community custody terms; or
- upon a finding of substantial and compelling reasons, revoke the MHSAs and impose a term of total or partial confinement within the standard range, or impose an exceptional sentence below the standard range if compelling reasons exist. The defendant must receive credit for time served in community custody against any term of total confinement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 20, 2021.

Staff Summary of Public Testimony:

(In support) This bill promotes and improves public safety by establishing alternatives for persons with mental health concerns. The efficacy of drug court has become very clear. This bill expands on that idea and addresses the underlying issues causing the behavior. This is beneficial not only for the person being sentenced, but also the entire community. This is a good addition and is part of humane treatment of people with mental illnesses. If conduct is decompensation-related, community intervention should occur before reincarceration. Under the bill, the defendant must participate voluntarily, and the program is based on the defendant's needs. The main objective is to provide ongoing treatment and community supports. Caution should be taken to ensure the requirements are not too onerous. There have been studies of these types of programs that have found it can be impossible for people to comply with the conditions imposed, which can cause difficulty for both community corrections officers and the person being supervised. Consider removing the provision that allows the DOC to address violations independently.

(Opposed) None.

Persons Testifying: Senator Nobles, prime sponsor; Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Tom Sahlberg, Retired-Indeterminate Sentencing Review Board.

Persons Signed In To Testify But Not Testifying: None.