

SSB 5588 - H COMM AMD

By Committee on Community Safety, Justice, & Reentry

**NOT ADOPTED 03/01/2024**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 9.94A.695 and 2021 c 242 s 1 are each amended to  
4 read as follows:

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

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

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

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

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

16 (2) A motion for a sentence under this section may be made by any  
17 party or the court, but is contingent upon the defendant's agreement  
18 to participate in the sentencing alternative. To determine whether  
19 the defendant has a serious mental illness, the court may rely on  
20 information including reports completed pursuant to chapters 71.05  
21 and 10.77 RCW, or other mental health professional as defined in RCW  
22 71.05.020, or other information and records related to mental health  
23 services. Information and records relating to mental health services  
24 must be handled consistently with RCW 9.94A.500(2). If insufficient  
25 information is available to determine whether a defendant has a  
26 serious mental illness, the court may order an examination of the  
27 defendant.

28 (3) To assist the court in its determination, the department  
29 shall provide a written report, which shall be in the form of a  
30 presentence investigation. Such report may be ordered by the court on  
31 the motion of a party prior to conviction if such a report will  
32 facilitate negotiations. The court may waive the production of this

1 report if sufficient information is available to the court to make a  
2 determination under subsection (4) of this section. The report must  
3 contain:

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

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

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

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

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

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

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

38 (5) If the court imposes an alternative sentence under this  
39 section, the department shall assign a community corrections officer  
40 to supervise the defendant. The department shall provide a community

1 corrections officer assigned under this section with appropriate  
2 training in mental health to be determined by the department.

3 (6) ~~((a))~~ For a defendant participating in this sentencing  
4 alternative, the court and correctional facility may delay the  
5 defendant's release from total confinement in order to facilitate  
6 adherence to the defendant's treatment plan. This may include  
7 delaying release in order to:

8 (a) Allow a defendant to transfer directly to an inpatient  
9 treatment facility or supportive housing provider;

10 (b) Ensure appropriate transportation is established and  
11 available; or

12 (c) Release the defendant during business hours on a weekday when  
13 services are available.

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

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

24 ~~((7))~~ (8)(a) If the court imposes this sentencing alternative,  
25 the court shall impose conditions under RCW 9.94A.703 that ~~((do not~~  
26 ~~conflict))~~ are consistent with this section and may impose any  
27 additional conditions recommended by any of the written reports  
28 regarding the defendant.

29 (b) The court shall impose specific treatment conditions:

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

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

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

1       (~~(8)~~) (9) Treatment issues arising during supervision shall be  
2 discussed collaboratively. The treatment provider, community  
3 corrections officer, and any representative of the person's medical  
4 assistance plan shall jointly determine intervention for violation of  
5 a treatment condition. The community corrections officer shall have  
6 the authority to address the violation independently if:

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

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

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

16       (~~(9)~~) (10) The community corrections officer, treatment  
17 provider, and any engaged representative of the defendant's medical  
18 assistance plan should collaborate prior to a progress update to the  
19 court. Required treatment interventions taken between court progress  
20 hearings shall be reported to the court as a part of the regular  
21 progress update to the court.

22       (~~(10)~~) (11) The court may schedule a review hearing for a  
23 defendant under this sentencing alternative at any time to evaluate  
24 the defendant's progress with treatment or to determine if any  
25 violations have occurred.

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

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

33       (~~(11)~~) (12) The court shall schedule a termination hearing one  
34 month prior to the end of the defendant's community custody. A  
35 termination hearing may also be scheduled if the department or the  
36 state reports that the defendant has violated the terms of community  
37 custody imposed by the court. At that hearing, the court may:

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

1 (b) Continue the hearing to a date before the expiration date of  
2 community custody, with or without modifying the conditions of  
3 community custody; or

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

13 ~~((12))~~ (13) The health care authority shall directly reimburse  
14 behavioral health providers for:

15 (a) Conducting in-custody evaluations and developing treatment  
16 plans for individuals recommended for this sentencing alternative;  
17 and

18 (b) Monitoring the individual's compliance with this sentencing  
19 alternative, including reporting to the court and the department of  
20 corrections.

21 (14) For the purposes of this section:

22 (a) "Behavioral health provider" has the same meaning as in RCW  
23 71.24.025.

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

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

33 NEW SECTION. Sec. 2. A new section is added to chapter 71.24  
34 RCW to read as follows:

35 Beginning January 1, 2025, the authority shall require that any  
36 contract with a managed care organization include a requirement that  
37 the managed care organization prioritize existing care coordination  
38 responsibilities, including in-custody mental health evaluations,  
39 treatment plan development, and same-day prescription access, for

1 incarcerated individuals who are recommended for the mental health  
2 sentencing alternative under RCW 9.94A.695."

3 Correct the title.

EFFECT: The amendment makes the following changes to when the court is determining whether to impose, or has imposed, a Mental Health Sentencing Alternative:

Restores the statutory requirement, unless waived by the court, for the Department of Corrections to include in its presentence investigation a proposed treatment plan for the defendant's mental illness.

Provides that the court or correctional facility may delay the defendant's release from total confinement in order to facilitate adherence to the defendant's treatment plan.

Requires the Health Care Authority (HCA) to directly reimburse behavioral health providers for conducting in-custody evaluations, developing treatment plans, and monitoring the individual's compliance with the sentencing alternative.

Provides that, beginning January 1, 2025, the HCA must require that any contract with a Managed Care Organization (MCO) include a requirement that the MCO prioritize existing care coordination responsibilities, including in-custody mental health evaluations, treatment plan development, and same-day prescription access for incarcerated individuals who are recommended for the sentencing alternative.

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