

SENATE BILL REPORT

SB 5588

As of February 14, 2023

Title: An act relating to the mental health sentencing alternative.

Brief Description: Concerning the mental health sentencing alternative.

Sponsors: Senators Nobles, Wagoner, Dhingra, Lovelett, Pedersen, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 2/14/23.

Brief Summary of Bill

- Requires the Department of Corrections (DOC) to include a diagnosis for the defendant in its written report when a defendant applies for a Mental Health Sentencing Alternative, and removes DOC's requirement to provide a proposed treatment plan from the provider that is agreeing to provide treatment.
- Allows courts to waive a requirement for DOC and the treatment provider to provide written reports before progress hearings.
- Allows treatment to occur in another state with jurisdiction over review and violation hearings retained in the county of sentencing.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: The Mental Health Sentencing Alternative, established in 2021, allows a sentencing court to waive a defendant's standard range sentence, and impose a term of community custody if:

- the defendant is convicted of a felony which is not a serious violent offense or a sex

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- offense;
- the defendant is diagnosed with a serious mental illness;
- the defendant and the community would benefit from supervision and treatment; and
- the defendant is willing to participate in the sentencing alternative.

Any party or the court may move for imposition of this alternative, but the defendant must be willing. The court may rely on existing health records to determine whether the defendant has a serious mental illness or order an examination of the defendant if sufficient information is unavailable. Before imposition of a Mental Health Sentencing Alternative, the Department of Corrections (DOC) must provide a written report in the form of a presentence investigation containing:

- a proposed treatment plan, including the name and address of treatment providers, an intake evaluation, a psychiatric evaluation, and development of an individualized treatment plan;
- an agreement by the treatment provider to monitor the progress of the defendant and notify the court and DOC if reasonable efforts at engagement do not produce substantial compliance with court-ordered treatment conditions;
- 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 consider whether the defendant and the community would benefit from imposition of the alternative, and consider the victim's opinion. If the court determines that the alternative is appropriate, the court must impose 12 to 24 months of community custody if the midpoint of the standard range sentence is less than or equal to 36 months, and 12 to 36 months of community custody for longer sentencing ranges. DOC must assign an appropriately trained community corrections officer to supervise the defendant.

The court may schedule regular progress hearings for the defendant. DOC 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 Mental Health Sentencing Alternative, 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 in the community.

Summary of Bill: DOC's written report before imposition of a Mental Health Sentencing Alternative must include a diagnosis for the defendant's mental illness, but does not have to provide a proposed treatment plan. The report must include agreement from the treatment provider agreeing to provide treatment to the defendant to develop an individualized plan of treatment and submit it as soon as possible to DOC and the court.

The court may waive the obligation of DOC and the treatment provider to submit a written report describing the progress and compliance with treatment of a person who has received a mental health sentencing alternative before a scheduled progress hearing.

The court may order the defendant to undergo treatment and supervision in another state, provided that jurisdiction to address any violations and review hearings must be retained by a judge in the county of sentencing. If the defendant has been sentenced in multiple jurisdictions, violations and review hearings must be addressed by the jurisdiction with the most serious charges. When determining the venue for review hearings, DOC and the courts may consider the burden on any victims to travel to the review hearings.

Appropriation: None.

Fiscal Note: Requested on January 26, 2023.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This sentencing alternative is a tremendous help to the community. People with serious mental health concerns deserve treatment, not criminalization. We can support their long-term health while promoting and improving public safety, by addressing their underlying issues for the benefit of the individual and the community. This bill helps make this policy usable as a resource for our justice system.

OTHER: Prosecutors are concerned about allowing someone to receive treatment and supervision out of state. We want to make sure people receive the right kind of treatment to meet Washington's expectations. Not having a treatment plan up front allows a lot of discretion without a lot of framework. We think a plan should be in place before the court enters that sentencing alternative.

Persons Testifying: PRO: Senator T'wina Nobles, Prime Sponsor.

OTHER: Taylor Gardner, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.