

SENATE BILL REPORT

SSB 5588

As Amended by House, March 1, 2024

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

Brief Description: Concerning the mental health sentencing alternative.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Nobles, Wagoner, Dhingra, Lovelett, Pedersen, Saldaña, Wellman and Wilson, C.).

Brief History:

Committee Activity: Law & Justice: 2/14/23, 2/16/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 1/24/24, 30-19.

Passed House: 3/1/24, 96-0.

Brief Summary of First Substitute 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.
- Removes a requirement for DOC to provide a proposed treatment plan for the defendant.
- Allows courts to waive a requirement for DOC and the treatment provider to provide written reports before progress hearings.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5588 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon, Valdez and Wagoner.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Padden, Ranking Member; McCune, Torres and Wilson, L..

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 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 First Substitute 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 an agreement from a mental health treatment provider to provide treatment to the defendant and 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.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.

EFFECT OF HOUSE AMENDMENT(S):

- Restores requirement for the Department of Corrections (DOC) to present the court with a

- proposed treatment plan before the court may order a mental health sentencing alternative.
- Allows a court or correctional facility to delay a defendant's release from total confinement in order to facilitate adherence to the defendant's treatment plan, such as by allowing the defendant to transfer directly to an inpatient treatment facility, ensuring appropriate transportation is established and available, and releasing the defendant during business hours on a weekday when services are available.
 - Alters court authority when a mental health sentencing alternative is revoked to allow the court to impose a standard range sentence or exceptional sentence and provide the defendant with credit for time served while in compliance and actively supervised in the community.
 - Requires the Health Care Authority to reimburse an entity for providing the following services related to the mental health sentencing alternative: (1) in-custody mental health assessment; (2) in-custody preliminary treatment plan development; and (3) ongoing monitoring of the defendant's adherence to the treatment plan and the requirements of the sentencing alternative, including reporting to the court and DOC.