
SUBSTITUTE SENATE BILL 5588

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/17/23.

1 AN ACT Relating to the mental health sentencing alternative; and
2 amending RCW 9.94A.695.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

17 (2) A motion for a sentence under this section may be made by any
18 party or the court, but is contingent upon the defendant's agreement
19 to participate in the sentencing alternative. To determine whether
20 the defendant has a serious mental illness, the court may rely on
21 information including reports completed pursuant to chapters 71.05

1 and 10.77 RCW, or other mental health professional as defined in RCW
2 71.05.020, or other information and records related to mental health
3 services. Information and records relating to mental health services
4 must be handled consistently with RCW 9.94A.500(2). If insufficient
5 information is available to determine whether a defendant has a
6 serious mental illness, the court may order an examination of the
7 defendant.

8 (3) To assist the court in its determination, the department
9 shall provide a written report, which shall be in the form of a
10 presentence investigation. Such report may be ordered by the court on
11 the motion of a party prior to conviction if such a report will
12 facilitate negotiations. The court may waive the production of this
13 report if sufficient information is available to the court to make a
14 determination under subsection (4) of this section. The report must
15 contain:

16 (a) A (~~(proposed treatment plan)~~) diagnosis for the defendant's
17 mental illness (~~(, including at a minimum:)~~);

18 (~~(i)~~) (b) The name and address of (~~(the)~~) a treatment provider
19 that (~~(has agreed)~~) is agreeing to provide treatment to the
20 defendant, including an intake evaluation, a psychiatric evaluation,
21 and development of an individualized plan of treatment which shall be
22 submitted as soon as possible to the department and the court; (~~and~~

23 ~~(ii)~~) (c) An agreement by the treatment provider to monitor the
24 progress of the defendant on the sentencing alternative and notify
25 the department and the court at any time during the duration of the
26 order if reasonable efforts to engage the defendant fail to produce
27 substantial compliance with court-ordered treatment conditions;

28 (~~(b)~~) (d) A proposed monitoring plan, including any
29 requirements regarding living conditions, lifestyle requirements, and
30 monitoring by family members and others;

31 (~~(e)~~) (e) Recommended crime-related prohibitions and
32 affirmative conditions; and

33 (~~(d)~~) (f) A release of information, signed by the defendant,
34 allowing the parties and the department to confirm components of the
35 treatment and monitoring plan.

36 (4) After consideration of all available information and
37 determining whether the defendant is eligible, the court shall
38 consider whether the defendant and the community will benefit from
39 the use of this sentencing alternative. The court shall consider the
40 victim's opinion whether the defendant should receive a sentence

1 under this section. If the sentencing court determines that a
2 sentence under this section is appropriate, the court shall waive
3 imposition of the sentence within the standard range. The court shall
4 impose a term of community custody between 12 and 24 months if the
5 midpoint of the defendant's standard range sentence is less than or
6 equal to 36 months, and a term of community custody between 12 months
7 and 36 months if the midpoint of the defendant's standard range
8 sentence is longer than 36 months. The actual length of community
9 custody within these ranges shall be at the discretion of the court.

10 (5) If the court imposes an alternative sentence under this
11 section, the department shall assign a community corrections officer
12 to supervise the defendant. The department shall provide a community
13 corrections officer assigned under this section with appropriate
14 training in mental health to be determined by the department.

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

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

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

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

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

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

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

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

22 (10) The court may schedule a review hearing for a defendant
23 under this sentencing alternative at any time to evaluate the
24 defendant's progress with treatment or to determine if any violations
25 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) The court shall schedule a termination hearing one month
34 prior to the end of the defendant's community custody. A termination
35 hearing may also be scheduled if the department or the state reports
36 that the defendant has violated the terms of community custody
37 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 supervised in the community against any term of total
10 confinement. The court must issue written findings indicating a
11 substantial and compelling reason to revoke this sentencing
12 alternative.

13 (12) For the purposes of this section:

14 (a) "Serious mental illness" means a mental, behavioral, or
15 emotional disorder resulting in a serious functional impairment,
16 which substantially interferes with or limits one or more major life
17 activities.

18 (b) "Victim" means any person who has sustained emotional,
19 psychological, physical, or financial injury to person or property as
20 a result of the crime charged. "Victim" also means a parent or
21 guardian of a victim who is a minor child unless the parent or
22 guardian is the perpetrator of the offense.

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