

**RCW 9.94A.695 Mental health sentencing alternative.** (1) A defendant is eligible for the mental health sentencing alternative if:

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

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

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

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

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

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

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

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

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

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

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

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

(4) After consideration of all available information and determining whether the defendant is eligible, the court shall consider whether the defendant and the community will benefit from the use of this sentencing alternative. The court shall consider the victim's opinion whether the defendant should receive a sentence under this section. If the sentencing court determines that a sentence under

this section is appropriate, the court shall waive imposition of the sentence within the standard range. The court shall impose a term of community custody between 12 and 24 months if the midpoint of the defendant's standard range sentence is less than or equal to 36 months, and a term of community custody between 12 months and 36 months if the midpoint of the defendant's standard range sentence is longer than 36 months. The actual length of community custody within these ranges shall be at the discretion of the court.

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

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

(b) Before any progress hearing, the department and the treatment provider shall each submit a written report informing the parties of the defendant's progress and compliance with treatment. At the progress hearing, the court shall 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.

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

(b) The court shall impose specific treatment conditions:

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

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

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

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

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

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

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

(9) The community corrections officer, treatment provider, and any engaged representative of the defendant's medical assistance plan should collaborate prior to a progress update to the court. Required treatment interventions taken between court progress hearings shall be

reported to the court as a part of the regular progress update to the court.

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

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

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

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

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

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

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

(12) For the purposes of this section:

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

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense. [2021 c 242 § 1.]

**Applicability—2021 c 242:** "This act applies to sentences imposed on or after July 25, 2021." [2021 c 242 § 7.]