

SENATE BILL REPORT

SB 5293

As Reported by Senate Committee On:
Law & Justice, February 11, 2021

Title: An act relating to mental health sentencing alternatives.

Brief Description: Addressing mental health sentencing alternatives.

Sponsors: Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 2/08/21, 2/11/21 [DPS-WM].

Brief Summary of First Substitute Bill

- Creates a mental health sentencing alternative allowing imposition of a period of community custody and mental health treatment in lieu of a standard range sentence for certain defendants who are diagnosed with a serious mental illness.
- Provides court discretion and victim input on whether a mental health sentencing alternative should be imposed.
- Specifies conditions of supervision for persons participating in the sentencing alternative.
- Allows the court to schedule progress hearings to monitor the defendant during the sentencing alternative.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5293 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member;

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.

McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Kevin Black (786-7747)

Background: Washington uses determinate sentencing for felony offenses, in which a standard range for the offense is determined by cross referencing the seriousness level of the offense, provided by statute, with an offender score based on the criminal history of the defendant. The judge must impose a sentence within the standard range for the offense unless the court finds there are substantial and compelling reasons to impose an exceptional sentence outside the standard range. Notwithstanding the standard range sentence, a number of other factors may apply to increase mandatory sentence terms for a defendant, including sentencing enhancements, mandatory minimum sentencing terms, determinate plus sentencing, and persistent offender sentencing.

Certain sentencing alternatives have been enacted which allow the court to waive the usual standard range without finding grounds for an exceptional sentence. These alternatives frequently allow a term of community custody to be imposed in lieu of confinement and may require the person to engage in a form of treatment. Sentencing alternatives for adult felony defendants include the First-Time Offender Waiver, Parenting Sentencing Alternative, Drug Offender Sentencing Alternative, and Special Sex Offender Sentencing Alternative.

Persons on community custody are supervised by community corrections officers. With the exception of persons who receive sentencing alternatives, Washington limits community supervision to persons who are classified high risk. The law provides procedures for persons sentenced to community custody which include mandatory conditions of supervision, review, imposition of additional conditions, and structured revocation that do not call for direct court supervision or review.

In 2019, the Legislature established a Criminal Sentencing Task Force to review state sentencing laws which met throughout 2019 and 2020. The task force produced a final report containing 47 consensus recommendations in December 2020. Recommendation Six of the report calls for establishing a mental health sentencing alternative.

Summary of Bill (First Substitute): A mental health sentencing alternative (MHSA) is created, which allows a sentencing court to waive the standard range 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 a MHSA, 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 available. Before imposition of a MHSA, the Department of Corrections 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 the Department of Corrections 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 consider whether the defendant and the community would benefit from imposition of the MHSA and consider the victim's opinion. If the court determines that a MHSA 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 12-36 months of community custody for longer sentencing ranges. The Department of Corrections must assign a community corrections officer to supervise the defendant and provide the community corrections officer with appropriate mental health training to be determined by the Department.

The court may impose conditions such as:

- meet with treatment providers and follow their recommendations;
- take medications as prescribed and comply with medication monitoring if requested;
- refrain from alcohol and unprescribed drugs, if the defendant has a diagnosis of a substance use disorder.

Treatment issues arising during supervision must be discussed collaboratively, with the treatment provider, community custody officer, and any representative of the defendant's medical assistance plan jointly determining intervention for a violation of a treatment condition. Violations that impact safety or relate to standard conditions of supervision may be addressed independently by the community corrections officer. The court may assess a supervision charge of \$30 per month against the defendant if the defendant is financially able. No supervision fee may be charged if the defendant is on public assistance.

The court may schedule regular progress hearings for the defendant. The Department of Corrections 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 MHSA 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 for time served in the community.

Serious mental illness is defined as a mental, behavioral, or emotional disorder resulting in a serious functional impairment, which substantially interferes with or limits one or more major life activities.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Changes the name of the alternative to MHSA.
- Changes eligibility for a MHSA to require diagnosis of a serious mental illness, defined as a mental, behavioral, or emotional disorder resulting in a serious functional impairment which substantially interferes with or limits one or more major life activities.
- Requires the court to consider the victim's opinion whether the defendant should receive a MHSA.
- Increases requirements for a proposed treatment plan under a MHSA to include an intake evaluation, psychiatric evaluation, development of an individualized treatment plan to be submitted to the Department of Corrections and the court, and a monitoring agreement in which the treatment provider agrees to provide notifications to the court.
- Provides discretion to the court over the scheduling of progress hearings for the defendant.
- Requires treatment issues arising during supervision to be discussed collaboratively between the community corrections officer and treatment provider to jointly determine intervention.
- Removes authority to spend money from the Criminal Justice Treatment Account.
- Makes technical and clarifying amendments.

Appropriation: None.

Fiscal Note: Requested on February 5, 2021.

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

Effective Date: The bill takes effect on July 20, 2021.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This advances public health and public safety. It addresses the root causes of criminal behavior where mental health or brain injuries are a factor. This bill expands on the ideas of drug courts. It is a recommendation of the Washington Criminal Sentencing Task Force. This has been the work of many years. There are sentencing alternatives for almost every kind of issue that brings

people into the criminal justice system, but the one that causes the greatest difficulty for people is mental illness. We are not doing well by individuals with mental illness in the criminal justice system. This provides a unique opportunity to provide treatment in the community and supervision to help those who need it. There is no guarantee of Department of Corrections supervision without a special sentencing alternative. It is time for this. I have represented young adults who have first psychotic episodes and face jail and prison. A family calls 911 asking for help and instead of a hospital stay their son ends up in jail. This measure supports resilience to trauma. I believe in aggressive, proactive application of the law. This bill does the right thing. Community custody works. Treatment works. Smart justice demands we stop warehousing persons with mental illness.

OTHER: The goals of this bill are laudable. Please do not use money from the Criminal Justice Treatment Account, which is designed for people with a diagnosis of substance use disorder. The entirety of the funds in the account are already spent. We have concerns about the fiscal impact of extra pressure on the courts. Courts in rural areas may not have the funding and personnel to utilize this program. Please address victims' interests, and create a nexus between the mental illness and the criminal conduct. We see this as an unfunded mandate. We should take a global look at the funding being placed in the behavioral health system. There are other ways to address mental illness in the justice system, such as by a mitigating factor. The classification of severe and persistent mental health issue is very broad. The exclusion of serious violent offenses is too narrow.

Persons Testifying: PRO: Senator T'wina Nobles, Prime Sponsor; Tom Sahlberg, Retired-Indeterminate Sentencing Review Board; Kathleen Kyle, Snohomish County Public Defender Association; Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers.

OTHER: Bob Cooper, Washington Association of Drug Courts; Tom McBride, Superior Court Judges' Association; Juliana Roe, Washington State Association of Counties; Russell Brown, Washington Association of Prosecuting Attorneys.

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