

SSB 5588 - H COMM AMD
By Committee on Appropriations

ADOPTED AND ENGROSSED 03/01/2024

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

16 (2) A motion for a sentence under this section may be made by any
17 party or the court, but is contingent upon the defendant's agreement
18 to participate in the sentencing alternative. To determine whether
19 the defendant has a serious mental illness, the court may rely on
20 information including reports completed pursuant to chapters 71.05
21 and 10.77 RCW, or other mental health professional as defined in RCW
22 71.05.020, or other information and records related to mental health
23 services. Information and records relating to mental health services
24 must be handled consistently with RCW 9.94A.500(2). If insufficient
25 information is available to determine whether a defendant has a
26 serious mental illness, the court may order an examination of the
27 defendant.

28 (3) To assist the court in its determination, the department
29 shall provide a written report, which shall be in the form of a
30 presentence investigation. Such report may be ordered by the court on
31 the motion of a party prior to conviction if such a report will
32 facilitate negotiations. The court may waive the production of this

1 report if sufficient information is available to the court to make a
2 determination under subsection (4) of this section. The report must
3 contain:

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

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

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

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

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

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

24 (4) After consideration of all available information and
25 determining whether the defendant is eligible, the court shall
26 consider whether the defendant and the community will benefit from
27 the use of this sentencing alternative. The court shall consider the
28 victim's opinion whether the defendant should receive a sentence
29 under this section. If the sentencing court determines that a
30 sentence under this section is appropriate, the court shall waive
31 imposition of the sentence within the standard range. The court shall
32 impose a term of community custody between 12 and 24 months if the
33 midpoint of the defendant's standard range sentence is less than or
34 equal to 36 months, and a term of community custody between 12 months
35 and 36 months if the midpoint of the defendant's standard range
36 sentence is longer than 36 months. The actual length of community
37 custody within these ranges shall be at the discretion of the court.

38 (5) If the court imposes an alternative sentence under this
39 section, the department shall assign a community corrections officer
40 to supervise the defendant. The department shall provide a community

1 corrections officer assigned under this section with appropriate
2 training in mental health to be determined by the department.

3 (6) ~~((a))~~ For a defendant participating in this sentencing
4 alternative, the court and correctional facility may delay the
5 defendant's release from total confinement in order to facilitate
6 adherence to the defendant's treatment plan. This may include
7 delaying release in order to:

8 (a) Allow a defendant to transfer directly to an inpatient
9 treatment facility or supportive housing provider;

10 (b) Ensure appropriate transportation is established and
11 available; or

12 (c) Release the defendant during business hours on a weekday when
13 services are available.

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

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

24 ~~((7))~~ (8)(a) If the court imposes this sentencing alternative,
25 the court shall impose conditions under RCW 9.94A.703 that ~~((do not~~
26 ~~conflict))~~ are consistent with this section and may impose any
27 additional conditions recommended by any of the written reports
28 regarding the defendant.

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

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

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

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

1 ~~((8))~~ (9) 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))~~ (10) The community corrections officer, treatment
17 provider, and any engaged representative of the defendant's medical
18 assistance plan should collaborate prior to a progress update to the
19 court. Required treatment interventions taken between court progress
20 hearings shall be reported to the court as a part of the regular
21 progress update to the court.

22 ~~((10))~~ (11) The court may schedule a review hearing for a
23 defendant under this sentencing alternative at any time to evaluate
24 the defendant's progress with treatment or to determine if any
25 violations 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))~~ (12) The court shall schedule a termination hearing one
34 month prior to the end of the defendant's community custody. A
35 termination hearing may also be scheduled if the department or the
36 state reports that the defendant has violated the terms of community
37 custody 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~~
5 ~~total or partial confinement within the~~) standard ((sentence)) range
6 sentence or impose an exceptional sentence below the standard
7 sentencing range if compelling reasons are found by the court or the
8 parties agree to the downward departure. The defendant shall receive
9 credit for time served while in compliance and actively supervised in
10 the community against any term of total confinement. The court must
11 issue written findings indicating a substantial and compelling reason
12 to revoke this sentencing alternative.

13 ((12)) (13) The health care authority shall reimburse for the
14 following services provided for individuals participating in the
15 sentencing alternative:

16 (a) In-custody mental health assessments;

17 (b) In-custody preliminary treatment plan development; and

18 (c) Ongoing monitoring of the defendant's adherence to the
19 defendant's treatment plan and the requirements of the sentencing
20 alternative, including reporting to the court and the department.

21 (14) For the purposes of this section:

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

26 (b) "Victim" means any person who has sustained emotional,
27 psychological, physical, or financial injury to person or property as
28 a result of the crime charged. "Victim" also means a parent or
29 guardian of a victim who is a minor child unless the parent or
30 guardian is the perpetrator of the offense."

31 Correct the title.

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