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**Community Safety, Justice, & Reentry  
Committee**

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**SSB 5588**

**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 Summary of Substitute Bill**

- Requires the Department of Corrections (DOC), in its presentence investigation report for a mental health sentencing alternative, to provide a diagnosis for the defendant's mental illness, rather than a proposed treatment plan.
- Provides the court discretion to waive the requirement that the DOC and the treatment provider submit reports, prior to any progress hearing, informing the parties of the defendant's progress and compliance with treatment.

**Hearing Date:** 2/15/24

**Staff:** Lena Langer (786-7192).

**Background:**

Felony Sentencing.

Sentences for most felony offenses are determined by reference to a sentencing grid established in the Sentencing Reform Act (SRA). The sentencing grid provides a standard range of months of confinement, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the person's criminal history.

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*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.*

In some circumstances, the SRA provides sentencing courts discretion to order an alternative sentence in place of a standard sentence. Sentencing alternatives generally result in a person serving a shorter term of confinement and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment and to submit to community custody or a form of partial confinement. Several sentencing alternatives are established within the SRA, including the Drug Offender Sentencing Alternative, the Special Sex Offender Sentencing Alternative, the Parenting Sentencing Alternative, and the Mental Health Sentencing Alternative (MHSA).

#### Community Custody.

Community custody is a portion of a sentence served in the community, subject to conditions imposed by the court and the Department of Corrections (DOC). The DOC supervises certain categories of persons sentenced to community custody, including those sentenced to community custody as part of a sentencing alternative. If a person serving an alternative sentence violates the conditions of community custody, that person is subject to processes and sanctions outlined in the sentencing alternative, which may include modification of conditions or revocation of the alternative sentence and imposition of a standard sentence.

#### Mental Health Sentencing Alternative.

If the sentencing court determines that the MHSA is appropriate, the court must waive imposition of the standard range sentence and instead impose a term of community custody and treatment.

#### *Eligibility for the MHSA.*

A defendant is eligible for the MHSA if:

- the defendant is convicted of a felony that is not a serious violent offense or sex offense;
- 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;
- the defendant and the community would benefit from the defendant's 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. The court may rely on existing health records to determine whether the defendant has a serious mental illness, or if sufficient information is not available, the court may order an examination of the defendant. To assist the court in making its eligibility determination, the DOC must prepare 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 defendant's progress and notify the court and the DOC if reasonable efforts at engagement do not produce substantial compliance with court-ordered treatment conditions;

- a proposed monitoring plan;
- recommended crime-related prohibitions and affirmative conditions; and
- a release of information, signed by the defendant, allowing the parties and the DOC to confirm components of the treatment and monitoring plan.

The court may waive the requirement of the presentence investigation report if sufficient information is available to the court to make the eligibility determination. The court must consider whether the defendant and the community would benefit from imposition of the MHSA and consider the victim's opinion.

*Requirements of the MHSA.*

If the court determines that a MHSA is appropriate, the court must impose a term of community custody that is between 12 and 24 months, if the midpoint of the defendant's standard sentence range is 36 months or less, and between 12 and 36 months, if the standard sentence range is longer than 36 months. The DOC must assign a community corrections officer with appropriate mental health training to supervise the defendant under the MHSA.

*Monitoring and Enforcement Under the MHSA.*

The court may schedule progress hearings to evaluate the defendant's progress in treatment and compliance with conditions of supervision. Prior to any progress hearing, the DOC and the treatment provider must each submit a written report informing the parties of the defendant's progress and compliance with treatment. At the progress hearing, the court must 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.

The court must impose specified treatment conditions. Treatment issues that arise during supervision must be discussed collaboratively. Decisions regarding intervention for violation of a treatment condition must be made jointly; however, the community corrections officer may address a violation independently if it is a safety-related violation, the violation is from decompensation-related psychosis and presents a risk to the community or defendant that cannot be mitigated by community intervention, or the violation relates to a standard supervision condition. A report of any treatment interventions must be included in progress updates to the court.

The court may schedule a review hearing at any time to evaluate the defendant's progress with treatment and to determine if any violations have occurred. At a review hearing, the court may modify the terms of community custody or impose sanctions. In the event of a violation of community custody terms or failure to make satisfactory progress in treatment, the court may order the defendant to serve a term of total or partial confinement.

The court must schedule a termination hearing one month prior to the end of the defendant's term of community custody. The court may additionally schedule a termination hearing upon report of the defendant's violation of community custody terms. At the hearing, the court may:

- authorize the DOC to terminate the defendant's community custody status on the

- expiration date;
- continue the hearing to a date before the expiration date, with or without modifying community custody terms; or
- revoke the MHSA and impose a term of total or partial confinement within the standard range, or impose an exceptional sentence below the standard range if compelling reasons exist. The defendant must receive credit for time served in community custody against any term of total confinement.

**Summary of Bill:**

If the court orders the DOC to provide a report to assist with determining whether a person is eligible for the MHSA, the DOC must include in its report a diagnosis for the defendant's mental illness, rather than a proposed treatment plan. In addition to the diagnosis, the report must still include:

- the name and address of a treatment provider that is agreeing 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 DOC and the court;
- an agreement by the treatment provider to monitor the defendant's progress and notify the court and the DOC if reasonable efforts at engagement do not produce substantial compliance with court-ordered treatment conditions;
- a proposed monitoring plan;
- recommended crime-related prohibitions and affirmative conditions; and
- a release of information, signed by the defendant, allowing the parties and the DOC to confirm components of the treatment and monitoring plan.

The court may waive the requirement that the DOC and the treatment provider submit written reports, prior to any progress hearing, informing the parties of the defendant's progress and compliance with treatment.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.