

HOUSE BILL REPORT

SSB 5588

As Reported by House Committee On:
Community Safety, Justice, & Reentry
Appropriations

Title: An act relating to the mental health sentencing alternative.

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 History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/15/24, 2/20/24 [DPA];
Appropriations: 2/23/24, 2/26/24 [DPA(APP w/o CSJR)].

Brief Summary of Substitute Bill
(As Amended by Committee)

- Provides that, when a Mental Health Sentencing Alternative (MHSA) has been imposed, the court or correctional facility may delay the defendant's release from total confinement in order to facilitate adherence to the defendant's treatment plan.
- Grants the court discretion to waive the requirement that the Department of Corrections (DOC) and the treatment provider submit reports, prior to any progress hearing, informing the parties of the defendant's progress and compliance with treatment.
- Requires the Health Care Authority (HCA) to contract with an entity to reimburse behavioral health providers in an amount not to exceed \$1,000 per individual participating in an MHSA for in-custody assessments, treatment plan development, monitoring and reporting to the court and the DOC.
- Provides that, beginning January 1, 2025, the HCA must require that any

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contract with a Managed Care Organization (MCO) include a requirement that the MCO prioritize existing care coordination responsibilities, including in-custody mental health evaluations, treatment plan development, and same-day prescription access for incarcerated individuals who are recommended for the MHSA.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Simmons, Vice Chair; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse and Ramos.

Minority Report: Without recommendation. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Graham.

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.

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 Mental Health Sentencing Alternative.

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 an 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 Mental Health Sentencing Alternative.

If the court determines that an 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 Mental Health Sentencing Alternative.

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.

The Health Care Authority and Managed Care Organizations.

The Health Care Authority (HCA) administers the Medicaid program which is a state and federal program that pays for health care for low-income state residents who meet certain eligibility criteria. Washington's Medicaid program, known as Apple Health, offers a medical benefits package to eligible families, children under age 19, low-income adults,

certain disabled individuals, and pregnant women. The HCA contracts with Managed Care Organizations (MCOs) and behavioral health administrative services organizations to provide integrated medical care services, including behavioral health care services, to Medicaid clients.

Summary of Amended Bill:

When an MHSA has been imposed, the court or correctional facility may delay the defendant's release from total confinement in order to facilitate adherence to the defendant's treatment plan, including delaying release to:

- allow a defendant to transfer directly to an inpatient treatment facility or supportive housing provider;
- ensure appropriate transportation is established and available; or
- release the defendant during business hours on a weekday when services are available.

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.

If the court revokes a defendant's MHSA and imposes a term of total confinement, the defendant must receive credit for time served while actively supervised, rather than supervised, in the community against any term of total confinement.

The HCA must directly reimburse behavioral health providers for conducting in-custody evaluations, developing treatment plans, and monitoring the individual's compliance with the MHSA.

Beginning January 1, 2025, the HCA must require that any contract with an MCO include a requirement that the MCO prioritize existing care coordination responsibilities, including in-custody mental health evaluations, treatment plan development, and same-day prescription access, for incarcerated individuals who are recommended for the sentencing alternative.

Amended Bill Compared to Substitute Bill:

The amended bill does the following:

- restores the statutory requirement, unless waived by the court, for the DOC to include in its presentence investigation report a proposed treatment plan for the defendant's mental illness;
- provides that the court or correctional facility may delay the defendant's release from total confinement in order to facilitate adherence to the defendant's treatment plan;
- requires the HCA to directly reimburse behavioral health providers for conducting in-

- custody evaluations, developing treatment plans, and monitoring the individual's compliance with the sentencing alternative; and
- provides that, beginning January 1, 2025, the HCA must require that any contract with an MCO include a requirement that the MCO prioritize existing care coordination responsibilities, including in-custody mental health evaluations, treatment plan development, and same-day prescription access for incarcerated individuals who are recommended for the sentencing alternative.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2024.

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

Staff Summary of Public Testimony:

(In support) This bill makes the process of the MHSA more efficient by requiring the DOC to provide in its presentence report a diagnosis of the defendant's mental illness rather than a treatment plan. Further, the bill allows the court to waive the requirement that the DOC and the treatment provider provide a written report prior to each progress hearing. The MHSA was established because many criminal defendants have serious mental health concerns. One of the problems that has been identified with the MHSA process is that many of these defendants are in custody and in a lot of jurisdictions they are not able to be set up with a treatment provider who can develop a treatment plan. This is often because the defendants do not have insurance. If a furlough was considered to allow for a treatment plan evaluation, there would be a significant wait time to get an individual approved for that. Individuals in more remote counties do not have access to treatment providers who can evaluate them in the facilities and that creates geographical differences in justice. There is a suggested amendment to the bill to address adding inpatient treatment facilities for individuals when needed.

(Opposed) There is opposition to removing the requirement to provide a treatment plan and provide a diagnosis before the court enters the MHSA for a defendant. The MHSA is an alternative to going to prison and, because of this, all parties should have access to a plan with which the defendant must comply. There is willingness to work on this bill to figure out a path forward. There is suggested language to add to the statute when a person with an MHSA is out of compliance with their treatment.

Persons Testifying: (In support) Senator T'wina Nobles, prime sponsor; and Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Community Safety, Justice, & Reentry. Signed by 26 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Minority Report: Without recommendation. Signed by 3 members: Representatives Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Schmick.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Safety, Justice, & Reentry:

The House Appropriations Committee recommended removing the requirement for the HCA to reimburse behavioral health providers for conducting in-custody evaluations, developing treatment plans, and monitoring an individual's compliance with an MHSA. Instead, the HCA is required to contract with a behavioral health agency, or an organization whose membership includes behavioral health agencies, to reimburse behavioral health providers for the following services provided to individuals participating in the MHSA: (1) in-custody mental health assessments; (2) treatment plan development; (3) monitoring the defendant's adherence to the treatment plan and the MHSA; and (4) reporting to the court and the DOC. The amount that the HCA may reimburse a behavioral health provider for the services provided to individuals participating in the MHSA is limited to \$1,000 per individual.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2024.

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

Staff Summary of Public Testimony:

(In support) The bill addresses issues that have been detrimental to the success of individuals most in need of supervision in the community, and the changes in the striking amendment are very good. More investments are needed to help individuals with mental health issues in our communities.

(Opposed) None.

Persons Testifying: Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.