

FINAL BILL REPORT

2SSB 5293

Brief Description: Addressing mental health sentencing alternatives.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege and Wilson, C.).

Senate Committee on Law & Justice

Senate Committee on Ways & Means

House Committee on Public Safety

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.

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 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: 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.

Votes on Final Passage:

Senate	48	0
House	88	9

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