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**SENATE BILL 5293**

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**State of Washington****67th Legislature****2021 Regular Session****By Senator Nobles**

1       AN ACT Relating to mental health sentencing alternatives;  
2 amending RCW 9.94A.501; adding a new section to chapter 9.94A RCW;  
3 creating a new section; providing an effective date; and declaring an  
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.**   A new section is added to chapter 9.94A  
7 RCW to read as follows:

8       (1) A convicted defendant is eligible for the mental disability  
9 mandated observation and treatment alternative to incarceration if:

10       (a) The defendant is convicted of a felony that is not a serious  
11 violent offense;

12       (b) The defendant is diagnosed with a severe and persistent  
13 mental health issue recognized by the diagnostic manual in use by  
14 mental health professionals at the time of sentencing;

15       (c) The defendant would benefit from supervision and treatment;

16       (d) The defendant's sentence could include incarceration; and

17       (e) The defendant is willing to participate in the sentencing  
18 alternative.

19       (2) A motion for a sentence under this section may be made by the  
20 court, the defendant, or the state, but is contingent upon the  
21 defendant's agreement to participate in the sentencing alternative.

1 If the sentencing court determines that the defendant is eligible for  
2 this alternative, the court may order an examination of the  
3 defendant. The court can waive the examination if sufficient  
4 information is available regarding the defendant's mental health  
5 issue: That information may include previous written reports  
6 including reports completed pursuant to chapters 71.05 and 10.77 RCW  
7 and written reports from a discharge planner, social worker, or  
8 similar professional with mental health expertise.

9 (3) A written report shall be completed to assist the court in  
10 its determination. The written report shall be in the form of a  
11 presentence investigation. A report may be ordered on the motion of a  
12 party or the court prior to conviction if such a report will  
13 facilitate negotiations. The report must contain:

14 (a) Either a proposed treatment or supervision plan to address  
15 the underlying mental health issue, or both;

16 (b) The recommended frequency and length of treatment;

17 (c) The name and address of any treatment providers including any  
18 person providing medication relating to the mental health diagnosis;

19 (d) A proposed monitoring plan, including any requirements  
20 regarding living conditions, lifestyle requirements, and monitoring  
21 by family members and others;

22 (e) Recommended crime-related prohibitions and affirmative  
23 conditions; and

24 (f) A release of information, signed by the defendant, so that  
25 the parties can confirm components of the treatment and monitoring  
plan.

27 (4) If the court determines that a sentence under this section is  
28 appropriate, the court shall waive imposition of the sentence within  
29 the standard range. The court shall impose a term of community  
30 custody between 12 and 24 months for any standard range sentence of  
31 zero days to 36 months. The court shall impose a term of community  
32 custody between 12 months and 36 months for any standard range  
33 sentence that is longer than 36 months. The actual length of  
34 community custody within these ranges shall be at the discretion of  
35 the court.

36 (a) When the court imposes the term of community custody, the  
37 department shall assign the defendant to a community custody officer  
38 with mental health training or to a special needs unit or behavioral  
39 health unit if one exists.

1       (b) The court shall impose conditions related to the needs of the  
2 defendant, which shall include treatment and supervision in the  
3 community. The conditions are set forth in subsection (5) of this  
4 section.

5       (c) The court shall schedule regular progress hearings for the  
6 defendant. Progress hearings shall occur as frequently as needed to  
7 meet the needs of the defendant.

8       (d) Before any progress hearing, the department and any treatment  
9 provider shall submit a written report informing the parties of the  
10 defendant's progress and compliance with treatment. At the progress  
11 hearing, the court shall hear from the parties regarding the  
12 defendant's compliance and may modify the conditions of community  
13 custody if the modification serves the interests of justice and the  
14 best interests of the defendant.

15      (5)(a) If the court imposes this sentencing alternative, the  
16 court may impose any condition recommended by any of the written  
17 reports regarding the defendant, and such other conditions as the  
18 court considers appropriate.

19      (b) In addition, the court may require the defendant to:

20       (i) Comply with chemical dependency assessments and treatment  
21 recommendations if there is an indication that the defendant has a  
22 dual diagnosis which includes mental disability or impairment and  
23 substance abuse;

24       (ii) Comply with urinalysis or breathalyzer monitoring if needed;

25       (iii) Meet with treatment providers for counseling, behavior  
26 management, medication management, assessments, and group therapy  
27 treatment as requested by the treatment providers;

28       (iv) Take medications as prescribed, including monitoring of  
29 compliance with medication if needed;

30       (v) Devote time to specific employment, education, or training if  
31 able;

32       (vi) Remain within prescribed geographical boundaries;

33       (vii) Notify the court or community corrections officers when  
34 changing address, employment, or treatment provider;

35       (viii) Report as directed to their community corrections officer;

36       (ix) Sign releases of information with treatment providers to  
37 allow for the free exchange of information for the duration of the  
38 length of supervision imposed by the court;

39       (x) Pay court-ordered legal financial obligations;

40       (xi) Perform community restitution work; and

1 (xii) Stay out of areas designated by the sentencing court.

2 (c) The court may prohibit the offender from:

3 (i) Using alcohol or nonprescribed controlled substances if  
4 substance abuse is part of the diagnosis; or alcohol or nonprescribed  
5 controlled substances are contraindicated by medications prescribed  
6 for management of the mental disability. The court may order the  
7 department to monitor for the use of alcohol or nonprescribed  
8 controlled substances if the court prohibits use of those substances.  
9 The offender may be required to pay a fee of thirty dollars per month  
10 to offset the costs of supervision if they are financially able.  
11 Under no circumstances shall a person on public assistance or  
12 receiving social security be assessed supervision fees;

13 (ii) Committing any new violations of criminal law.

14 (6) The court may bring the defendant sentenced under this  
15 section back to court at any time to evaluate the defendant's  
16 progress with treatment or to determine if any violations have  
17 occurred.

18 (a) If the defendant is returned to court, the court may modify  
19 the terms of the community custody or impose sanctions if the court  
20 finds that the conditions have been violated or that different or  
21 additional terms are in the best interest of the defendant.

22 (b) The court may order the defendant to serve a term of total  
23 confinement for violating the terms of community custody or failing  
24 to make satisfactory progress in treatment. Alternatives to total  
25 confinement shall be the preferred manner of addressing violations.

26 (c) The court shall schedule a termination hearing one month  
27 prior to the end of the defendant's community custody. A termination  
28 hearing may also be scheduled if the department or the state reports  
29 that the defendant has violated the terms of community custody  
30 imposed by the court. At that hearing, the court may:

31 (i) Authorize the department to terminate the defendant's  
32 community custody status on the expiration date; or

33 (ii) Continue the hearing to a date before the expiration date of  
34 community custody, with or modifying the conditions of community  
35 custody; or

36 (iii) Revoke the sentencing alternative and impose a term of  
37 total confinement within the standard sentence range or impose an  
38 exceptional sentence below the standard sentencing range if  
39 compelling reasons are found by the court or the parties agree to the  
40 downward departure. The defendant will receive credit for time served

1 while supervised in the community against any term of total  
2 confinement. The court must reduce to writing the substantial and  
3 compelling reasons for revocation.

4 (7) An offender sentenced under the terms of this section shall  
5 be subject to all rules relating to earned release time with respect  
6 to any period served in total confinement.

7 (8) Costs of examinations and preparing treatment plans may be  
8 paid, at the option of the county, from funds provided to the county  
9 from the criminal justice treatment account under RCW 71.24.580.

10 **Sec. 2.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to  
11 read as follows:

12 (1) The department shall supervise the following offenders who  
13 are sentenced to probation in superior court, pursuant to RCW  
14 9.92.060, 9.95.204, or 9.95.210:

15 (a) Offenders convicted of:

16 (i) Sexual misconduct with a minor second degree;

17 (ii) Custodial sexual misconduct second degree;

18 (iii) Communication with a minor for immoral purposes; and

19 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

20 (b) Offenders who have:

21 (i) A current conviction for a repetitive domestic violence  
22 offense where domestic violence has been pleaded and proven after  
23 August 1, 2011; and

24 (ii) A prior conviction for a repetitive domestic violence  
25 offense or domestic violence felony offense where domestic violence  
26 has been pleaded and proven after August 1, 2011.

27 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
28 department pursuant to this section shall be placed on community  
29 custody.

30 (3) The department shall supervise every felony offender  
31 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702  
32 whose risk assessment classifies the offender as one who is at a high  
33 risk to reoffend.

34 (4) Notwithstanding any other provision of this section, the  
35 department shall supervise an offender sentenced to community custody  
36 regardless of risk classification if the offender:

37 (a) Has a current conviction for a sex offense or a serious  
38 violent offense and was sentenced to a term of community custody  
39 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

1       (b) Has been identified by the department as a dangerous mentally  
2 ill offender pursuant to RCW 72.09.370;

3       (c) Has an indeterminate sentence and is subject to parole  
4 pursuant to RCW 9.95.017;

5       (d) Has a current conviction for violating RCW 9A.44.132(1)  
6 (failure to register) and was sentenced to a term of community  
7 custody pursuant to RCW 9.94A.701;

8       (e) (i) Has a current conviction for a domestic violence felony  
9 offense where domestic violence has been pleaded and proven after  
10 August 1, 2011, and a prior conviction for a repetitive domestic  
11 violence offense or domestic violence felony offense where domestic  
12 violence was pleaded and proven after August 1, 2011. This subsection  
13 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

14       (ii) Has a current conviction for a domestic violence felony  
15 offense where domestic violence was pleaded and proven. The state and  
16 its officers, agents, and employees shall not be held criminally or  
17 civilly liable for its supervision of an offender under this  
18 subsection (4)(e)(ii) unless the state and its officers, agents, and  
19 employees acted with gross negligence;

20       (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,  
21 9.94A.670, ((or)) 9.94A.711, or section 1 of this act;

22       (g) Is subject to supervision pursuant to RCW 9.94A.745; or

23       (h) Was convicted and sentenced under RCW 46.61.520 (vehicular  
24 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)  
25 (felony DUI), or RCW 46.61.504(6) (felony physical control).

26       (5) The department shall supervise any offender who is released  
27 by the indeterminate sentence review board and who was sentenced to  
28 community custody or subject to community custody under the terms of  
29 release.

30       (6) The department is not authorized to, and may not, supervise  
31 any offender sentenced to a term of community custody or any  
32 probationer unless the offender or probationer is one for whom  
33 supervision is required under this section or RCW 9.94A.5011.

34       (7) The department shall conduct a risk assessment for every  
35 felony offender sentenced to a term of community custody who may be  
36 subject to supervision under this section or RCW 9.94A.5011.

37       (8) The period of time the department is authorized to supervise  
38 an offender under this section may not exceed the duration of  
39 community custody specified under RCW 9.94B.050, 9.94A.701 (1)

1 through (8), or 9.94A.702, except in cases where the court has  
2 imposed an exceptional term of community custody under RCW 9.94A.535.

3 (9) The period of time the department is authorized to supervise  
4 an offender under this section may be reduced by the earned award of  
5 supervision compliance credit pursuant to RCW 9.94A.717.

6        NEW SECTION.    **Sec. 3.**    This act applies to sentences imposed on  
7 or after the effective date of this section.

8        NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and takes  
11 effect July 20, 2021.

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