
SUBSTITUTE SENATE BILL 5588

AS AMENDED BY THE HOUSE

Passed Legislature - 2024 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Nobles, Wagoner, Dhingra, Lovelett, Pedersen, Saldaña, Wellman, and C. Wilson)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to the mental health sentencing alternative; and
2 amending RCW 9.94A.695.

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

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

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

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

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

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

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

17 (2) A motion for a sentence under this section may be made by any
18 party or the court, but is contingent upon the defendant's agreement
19 to participate in the sentencing alternative. To determine whether
20 the defendant has a serious mental illness, the court may rely on
21 information including reports completed pursuant to chapters 71.05

1 and 10.77 RCW, or other mental health professional as defined in RCW
2 71.05.020, or other information and records related to mental health
3 services. Information and records relating to mental health services
4 must be handled consistently with RCW 9.94A.500(2). If insufficient
5 information is available to determine whether a defendant has a
6 serious mental illness, the court may order an examination of the
7 defendant.

8 (3) To assist the court in its determination, the department
9 shall provide a written report, which shall be in the form of a
10 presentence investigation. Such report may be ordered by the court on
11 the motion of a party prior to conviction if such a report will
12 facilitate negotiations. The court may waive the production of this
13 report if sufficient information is available to the court to make a
14 determination under subsection (4) of this section. The report must
15 contain:

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

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

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

28 (b) A proposed monitoring plan, including any requirements
29 regarding living conditions, lifestyle requirements, and monitoring
30 by family members and others;

31 (c) Recommended crime-related prohibitions and affirmative
32 conditions; and

33 (d) A release of information, signed by the defendant, allowing
34 the parties and the department to confirm components of the treatment
35 and monitoring plan.

36 (4) After consideration of all available information and
37 determining whether the defendant is eligible, the court shall
38 consider whether the defendant and the community will benefit from
39 the use of this sentencing alternative. The court shall consider the
40 victim's opinion whether the defendant should receive a sentence

1 under this section. If the sentencing court determines that a
2 sentence under this section is appropriate, the court shall waive
3 imposition of the sentence within the standard range. The court shall
4 impose a term of community custody between 12 and 24 months if the
5 midpoint of the defendant's standard range sentence is less than or
6 equal to 36 months, and a term of community custody between 12 months
7 and 36 months if the midpoint of the defendant's standard range
8 sentence is longer than 36 months. The actual length of community
9 custody within these ranges shall be at the discretion of the court.

10 (5) If the court imposes an alternative sentence under this
11 section, the department shall assign a community corrections officer
12 to supervise the defendant. The department shall provide a community
13 corrections officer assigned under this section with appropriate
14 training in mental health to be determined by the department.

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

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

22 (b) Ensure appropriate transportation is established and
23 available; or

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

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

29 (b) Before any progress hearing, the department and the treatment
30 provider shall each submit a written report informing the parties of
31 the defendant's progress and compliance with treatment, unless waived
32 by the court. At the progress hearing, the court shall hear from the
33 parties regarding the defendant's compliance and may modify the
34 conditions of community custody if the modification serves the
35 interests of justice and the best interests of the defendant.

36 ~~((7))~~ (8)(a) If the court imposes this sentencing alternative,
37 the court shall impose conditions under RCW 9.94A.703 that ~~((do not~~
38 ~~conflict))~~ are consistent with this section and may impose any
39 additional conditions recommended by any of the written reports
40 regarding the defendant.

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

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

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

7 (iii) Refrain from using alcohol and nonprescribed controlled
8 substances if the defendant has a diagnosis of a substance use
9 disorder. The court may order the department to monitor for the use
10 of alcohol or nonprescribed controlled substances if the court
11 prohibits use of those substances.

12 (~~(8)~~) (9) Treatment issues arising during supervision shall be
13 discussed collaboratively. The treatment provider, community
14 corrections officer, and any representative of the person's medical
15 assistance plan shall jointly determine intervention for violation of
16 a treatment condition. The community corrections officer shall have
17 the authority to address the violation independently if:

18 (a) The violation is safety related with respect to the defendant
19 or others;

20 (b) The treatment violation consists of decompensation related to
21 psychosis that presents a risk to the community or the defendant and
22 cannot be mitigated by community intervention. The community
23 corrections officer may intervene with available resources such as a
24 designated crisis responder; or

25 (c) The violation relates to a standard condition for
26 supervision.

27 (~~(9)~~) (10) The community corrections officer, treatment
28 provider, and any engaged representative of the defendant's medical
29 assistance plan should collaborate prior to a progress update to the
30 court. Required treatment interventions taken between court progress
31 hearings shall be reported to the court as a part of the regular
32 progress update to the court.

33 (~~(10)~~) (11) The court may schedule a review hearing for a
34 defendant under this sentencing alternative at any time to evaluate
35 the defendant's progress with treatment or to determine if any
36 violations have occurred.

37 (a) At a review hearing the court may modify the terms of the
38 community custody or impose sanctions if the court finds that the
39 conditions have been violated or that different or additional terms
40 are in the best interest of the defendant.

1 (b) The court may order the defendant to serve a term of total or
2 partial confinement for violating the terms of community custody or
3 failing to make satisfactory progress in treatment.

4 ~~((11))~~ (12) The court shall schedule a termination hearing one
5 month prior to the end of the defendant's community custody. A
6 termination hearing may also be scheduled if the department or the
7 state reports that the defendant has violated the terms of community
8 custody imposed by the court. At that hearing, the court may:

9 (a) Authorize the department to terminate the defendant's
10 community custody status on the expiration date; or

11 (b) Continue the hearing to a date before the expiration date of
12 community custody, with or without modifying the conditions of
13 community custody; or

14 (c) Revoke the sentencing alternative and impose a ~~((term of~~
15 ~~total or partial confinement within the))~~ standard ~~((sentence))~~ range
16 sentence or impose an exceptional sentence below the standard
17 sentencing range if compelling reasons are found by the court or the
18 parties agree to the downward departure. The defendant shall receive
19 credit for time served while in compliance and actively supervised in
20 the community against any term of total confinement. The court must
21 issue written findings indicating a substantial and compelling reason
22 to revoke this sentencing alternative.

23 ~~((12))~~ (13) The health care authority shall reimburse for the
24 following services provided for individuals participating in the
25 sentencing alternative:

26 (a) In-custody mental health assessments;

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

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

31 (14) For the purposes of this section:

32 (a) "Serious mental illness" means a mental, behavioral, or
33 emotional disorder resulting in a serious functional impairment,
34 which substantially interferes with or limits one or more major life
35 activities.

36 (b) "Victim" means any person who has sustained emotional,
37 psychological, physical, or financial injury to person or property as
38 a result of the crime charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or
2 guardian is the perpetrator of the offense.

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