

SSB 5293: Addressing Mental Health Sentencing Alternatives

WDA and WACDL strongly support this long-needed sentencing alternative for those defendants with persistent mental health concerns. This bill addresses the needs of those with mental health issues in the criminal legal system and will assist them in maintaining stability.

- **This sentencing alternative is long overdue. Nationally, approximately one-third of the inmates in U.S. jails and prisons have a mental health impairment, and our jails and prisons have become de facto mental institutions. The monetary costs of incarcerating individuals far exceed the costs of supervision and treatment in the community.** Currently, there are sentencing alternatives to limit incarceration and address the treatment needs of those with families, with chemical dependency, and convicted of sex offenses, but none specifically for those suffering from mental illness. In 2013 in Washington, 58% of the 143,610 people booked in to jail had mental health treatment needs and 41% had co-occurring disorder indicators.¹
- **Action is required to address the ethical concerns of incarcerating those with mental illness and thereby perpetuating an endless cycle of decompensation, arrest, and later stabilization.** Approving this sentencing alternative demonstrates the legislature's commitment to addressing the needs of the most vulnerable in the criminal legal system. This act promotes respect for the law by providing punishment which is just; protects the public by providing supervision, regular reports to the court, and treatment suited for the defendant's needs; offers the defendant an opportunity to improve; makes frugal use of the state's and local governments' resources; and reduces the risk of reoffending by treating underlying mental health issues.
- **The manner in which we currently address mental health issues in the legal system is often inhumane. This sentencing alternative recognizes the unique circumstance of the individual defendant with mental health issues and needs for individualized treatment.** Many enter the justice system in need of treatment and rather than receiving timely treatment, vulnerable individuals are often boarded in jails waiting for weeks or months to receive necessary mental health care. Instead of addressing the issues that brought the individual before the court, individuals are often released without supervision or are sent to prison where their mental health worsens. This legislation provides for treatment in the community and does so for an extended period of time.

¹ Behavioral Health Needs of Jail Inmates in Washington State, Paula Ditton Henzel, MA, Jim Mayfield, MA, Andrés Soriano, BS, Barbara E.M. Felver, MES, MPA. January 2016 . Report to the Washington State Office of Financial Management's Statistical Analysis Center, Thea Mounts, Director and Keri-Anne Jetzer, Forecast Analyst. <https://sac.ofm.wa.gov/sites/all/themes/wasac/assets/docs/research-11-226a.pdf>

WASHINGTON DEFENDER ASSOCIATION
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

- **WDA and WACDL do not want for this alternative to be impossible for those with mental health issues to navigate.** As was mentioned during testimony and in questioning by Public Safety Committee Members, this is a population with unique challenges that cannot be successfully rehabilitated if we continue to process individuals inside of set boxes. This should be a sentencing alternative that is individualized to the needs of each participant and that is structured for individualized success.

WDA and WACDL request the following amendments to most effectively address the needs of this population:

- **Amend Section 1(1)(a)** to read “[t]he current conviction is a felony that is not a serious violent offense or a violent sex offense.” Mental health issues do not discriminate on prior criminal history. Many individuals in the criminal legal system are in desperate need of continued and sustained mental health treatment. WDA and WACDL do not want to exclude those with a current non-violent sex offenses (i.e., failure to register) or those with a past history of a disqualifying offense. As this alternative is at the discretion of the court, the court can consider prior criminal history.
- **Amend Section 1(3)(a)(ii)** to eliminate the treatment provider directly notifying the court. Notification to DOC remains appropriate. Maneuvering notification to the court is often beyond the expertise of community treatment providers and could provide inappropriate ex parte communications. In discussion with various courts, the courts have indicated a desire for the communication to go directly to DOC.
- **Amend Section 1(5)** to include language that that “[t]he lack of a community corrections officer with mental health training must not be the cause of denying this sentencing alternative.”
- **Strike the language in Section 1(8)** that allows the community corrections authority to address violations independently of the court. No community-based treatment alternative under the SRA allows for DOC to independently address alleged violations. Decompensation on the part of any person under DOC supervision should be promptly addressed, but nothing in this bill prevents the department from contacting a designated crisis responder or from having a defendant transported to the hospital for evaluation. More importantly, allowing DOC to independently address an alleged violation means a person who has decompensated may be incarcerated pursuant to DOC policy. The individuals best served by this alternative should not be subject to “swift and certain” punishment that does not address the actual violation.
- Most important, due to the nature of mental illness, we request that **Section 1(11)(c)** include language that “[r]evocation shall occur only if the defendant has willfully failed to adhere to the terms of this sentencing alternative.”

For more information, contact: Neil Beaver: (509) 979-9550 or neil.beaver@gmail.com; or Kari Reardon: (360) 578-5440 or reardonk@co.cowlitz.wa.us