

SB 5588: Concerning the Mental Health Sentencing Alternative

WDA and WACDL support the improvements to the mental health sentencing alternative proposed in SB 5588. This alternative became effective July 25, 2021. Since that time, barriers to implementation and supervision have been identified and are addressed in the bill.

Rare is the individual in the criminal system who is actively involved in mental health treatment at the time of arrest or at the time of sentencing. Having a treatment plan in place at the time of sentencing is a barrier to those who need on-going treatment being sentenced under this alternative. For individuals in-custody it is not possible to obtain a treatment provider until the person is released to the community. Without guidance those who are in the community are often not equipped to contact a treatment provider and voice what is needed in the treatment plan. Having the treatment plan established once an individual is released from custody and is working with a skilled community corrections officers, the treatment plan can be established. The individual will have access to insurance services, including Medicaid and Medicare, that are not available while a person is detained. Once under DOC supervision, DOC is able to do much more than a pre-sentence investigation.

Defense attorneys rarely have the capability or time to effectuate a treatment plan. Defender caseloads limit the amount of time that can be spent on a case, and the connections and knowledge to establish the plan and resources needed for success are very much outside the wheelhouse of defense attorneys.

Nobody wants to set a person sentenced under the mental health sentencing alternative up for failure. A cobbled together treatment plan to satisfy the current requirement is not effective. Assistance from the Community Corrections Officer in setting up a complete treatment plan is a necessary component. A PSI writer is not set up to establish a treatment plan prior to a person receiving that sentencing alternative.

The Legislature enacted a therapeutic alternative for the most vulnerable in the criminal legal system. DOC involvement in establishing the plan really is a necessary component to success and is the basis for a stronger relationship with the Community Corrections Officer.

If the Legislature is concerned about a treatment plan being set up after the court orders the sentencing alternative, a mandatory review hearing can be scheduled. RCW 9.94A.695(11) lists the only mandatory hearing, which is a termination hearing one prior to the end of community custody. RCW 9.94A.695(6) allows for progress hearings. RCW 9.94A.695(10) allows for review hearing to evaluate progress or to determine if violations occurred. Much like RCW 9.94A.664(3)(b), the court can schedule a hearing once DOC notifies the court that the treatment plan has been established. Any amended should allow the review hearing to be waived after the treatment plan has been provided to the court and parties.

Providing the most supportive environment ensures greater success. Many criminal defendants lack support in the community in which the offense occurred. DOC often transfers supervision to where an individual will have the best chance of success with stronger supportive bonds be it a different county or state. Additionally individuals may be established in a community out of state. Formalizing that the court will maintain supervision is important guidance.

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WDA is a non-profit organization created in 1983 to promote, assist, and encourage public defense systems which ensure that all accused persons in every court receive effective assistance of counsel

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The Department of Corrections was actively involved the proposed amendments. The requests to amend the statute are not happening in a vacuum. The Department of Corrections is working on the ground with those sentenced under this alternative and requested to change to assist in success.

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