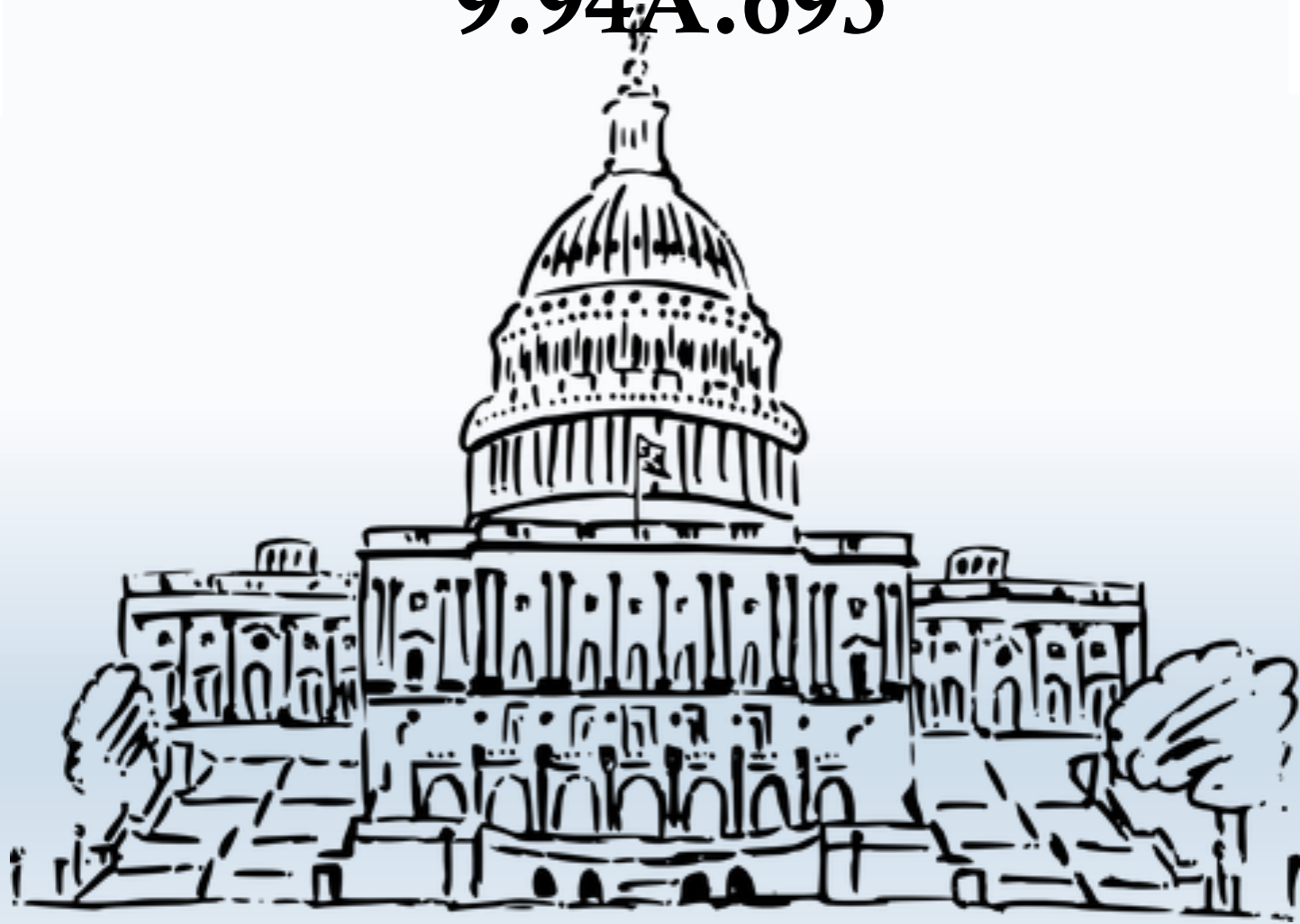
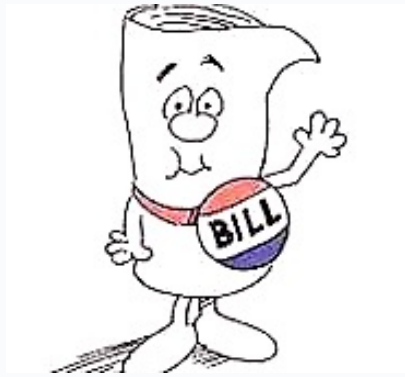
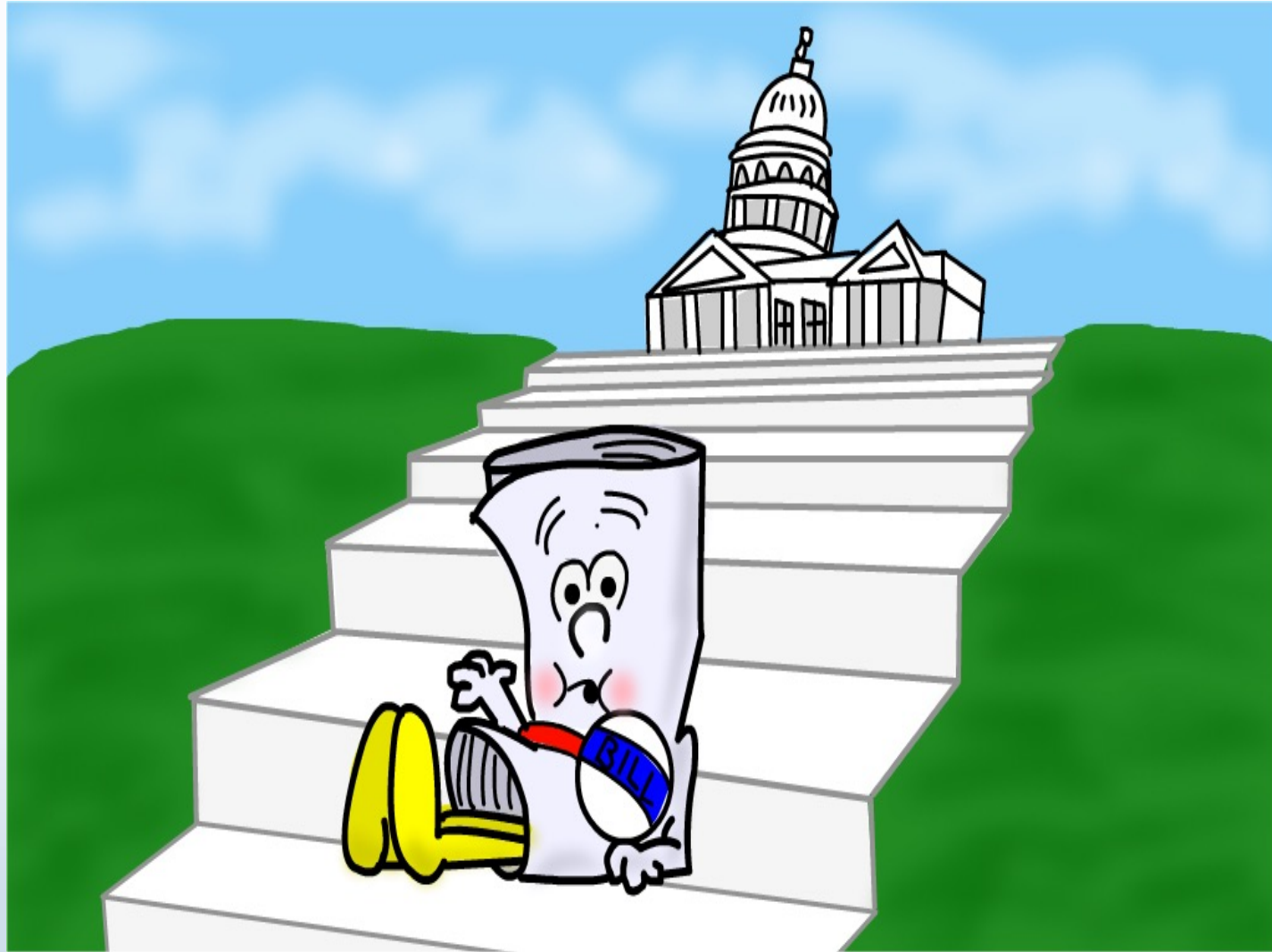
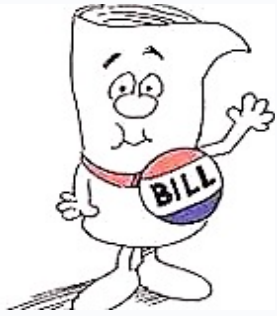


Mental Health Sentencing Alternative RCW 9.94A.695





Why Didn't We Have A Mental Health Sentencing Alternative Until 2021???

- **Alternatives to Total Confinement**
 - RCW 9.94A.680
- **First Time Offender Waiver**
 - RCW 9.94A.650
- **Special Sex Offender Sentencing Alternative**
 - RCW 9.94A.670
- **Work Ethic Camp**
 - RCW 9.94A.690





➤ **Drug Offender Sentencing Alternative**

- RCW 9.94A.660
 - Prison-based Drug Offender Sentencing Alternative - RCW 9.94A.662
 - Residential Substance Use Disorder Treatment-based Alternative - RCW 9.94A.664

➤ **Parent Sentencing Alternative**

- RCW 9.94A.655
 - Partial Confinement as Part of a Parenting Program – RCW 9.94.6551

And finally

- **January 2021 – MHSA introduced**
- **March 5, 2021 – passes Senate 48-0-1**
- **April 7, 2021 – passes House 88-9-1**
- **May 10, 2021 – signed by Governor Inslee**
- **Applies to those sentenced after July 25, 2021.**



SSB 5293 – Addressing mental health sentencing alternatives

Codified under RCW 9.94A.695



This sentencing alternative meets the purpose of the SRA

- **make the criminal legal system accountable to the public**
- **does not eliminate discretionary decisions**

Purpose of the SRA

- Punishment that is just
- Opportunity for improvement



Purpose of the SRA

- Make frugal use of the state's and local governments' resources



Reduce risk of reoffending



RCW 9.94A.010(2)(5)(6)(7)

Eligibility



****Violent offenses are eligible**

Individual and the community would benefit from supervision and treatment, as determined by the judge

Diagnosed with a **SERIOUS MENTAL ILLNESS**:

- a mental, behavioral, or emotional disorder
- resulting in a serious functional impairment
- which substantially interferes with or limits one or more major life activities.

RCW 9.94A.695(12)



- If insufficient information is available to determine whether a defendant has a serious mental illness, the court may order an examination of the defendant.
- Once the 2024 fiscal year starts in July, the Health Care Authority has to provide funding for in-custody assessments and treatment plan development.

Implementation:

- A motion for a sentence under this section may be made by any party or the court, BUT
- is contingent upon the defendant's agreement to participate in the sentencing alternative.

*RPC 1.2 & 1.6



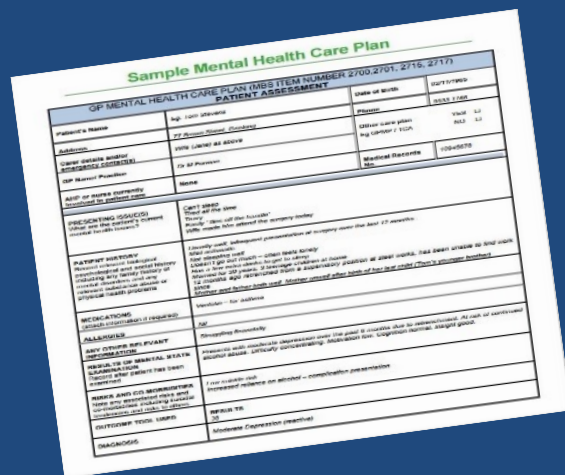
Reports For Court

- To assist the court in its determination, DOC or a treatment agency can provide a presentence investigation (PSI) or evaluation. The court can waive the PSI.
- A PSI may be ordered by the court prior to conviction if such a report will facilitate negotiations. E-mail for sample motion and briefing.



What the court must have for a MHSA

- (a) A proposed treatment plan for the defendant's mental illness, including at a minimum:
 - ❖ A treatment provider that is agreeing to provide treatment.
 - ❖ An intake evaluation, a psychiatric evaluation, and development of an individualized plan of treatment that shall be submitted ASAP to court and DOC.
 - ❖ An agreement by the treatment provider to monitor progress in treatment and inform court and DOC when there are issues.



The image shows a sample form titled "Sample Mental Health Care Plan" with the subtitle "GP MENTAL HEALTH CARE PLAN (MSB ITEM NUMBER 2700.2701, 2716, 2717) PATIENT ASSESSMENT". The form is a grid with various sections for patient information, assessment, and treatment planning. The sections include:

- PATIENT'S NAME:** Includes fields for name, date of birth, gender, race, and ethnicity.
- ADDRESS:** Includes fields for street address, city, state, and zip code.
- DATE OF ASSESSMENT:** Includes fields for date and time.
- ASSESSMENT:** Includes fields for presenting issues, patient history, and current symptoms.
- RECOMMENDATIONS:** Includes fields for treatment goals and interventions.
- PROVIDER:** Includes fields for provider name, title, and contact information.
- DATE:** Includes fields for date of assessment and date of next assessment.

Other necessary components

- (b) A proposed monitoring plan.
- (c) Recommended crime-related prohibitions and affirmative conditions; and
- (d) A release of information.



RCW 9.94A.695 (3)

DOC CANNOT ESTABLISH THE TREATMENT PLAN

- CCO's are not licensed mental health professionals and are not able to provide the mental health treatment.
- As a result, the treatment plan must be completed by an MHP.



To Impose

- The court shall consider whether the accused and the community will benefit from the use of the sentencing alternative.
- The court shall consider the victim's opinion.



If court orders MHSA:

Imposition of standard range is waived

Midpoint of standard range below/equal to 36 months then community custody shall be between 12 and 24 months

If midpoint is more than 36 months then up 36 months of community custody

SENTENCE RANGE										
Offender Score										
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m	9m	13m	15m	17.5m	25.5m	38m	50m	61.5m	73.5m
	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84

Eligibility is based on sentencing date

- The original bill (SSB 5293) was **very clear** that:
NEW SECTION. Sec. 7. This act **applies to sentences imposed on or after the effective date** of this section.
- This bill took effect on July 25, 2021.
- This is still something that can be used for individuals on DOSA resentencing.
- See also the Notes on Applicability in RCW 9.94A.695.

NOTES: Applicability—2021 c 242: "This act applies to sentences imposed on or after July 25, 2021." [2021 c 242 sec 7.]

Mental Health Sentencing Alternative

- Any person with a serious mental illness sentenced after July 25, 2021 is eligible.
- The date of offense does not matter!



Amendments this Legislative Session (SSB 5588)

- There were multiple amendments in the House that passed 96-0-2. The substitute bill passed the Senate 49-0.
- Release can be delayed to facilitate adherence to the treatment plan:
 - ❖ Allow transfer to inpatient treatment or supportive housing.
 - ❖ Ensure transportation is established/available.
 - ❖ Release during business hours on a weekday when services are available

Revocation

The court must issue written findings indicating a substantial and compelling reason to revoke this sentencing alternative.

If revoked credit must be given for all time served in compliance and actively supervised.

RCW 9.94A.695(12)(c)



Revocation

- If your client is revoked, the court can impose a standard range sentence OR may impose an exceptional sentence if
 - ❖ Compelling reasons are found, or
 - ❖ The parties agree to the downward departure.



Termination

A termination hearing must be held one month prior to the end of community custody.

RCW 9.94A.695



Your Client May Complete Supervision Early

- Based on DOC Policy 350.15, the Department will award 10 days of compliance credit each calendar month:
 - ❖ In compliance with supervision terms, and
 - ❖ Making progress towards the goals of their supervision case plan.



Caselaw

- There isn't much caselaw:
 - ❖ 6/13/24 – unpub *St v. Young* (Div III) – COA finds that PTSD and ADHD are not serious mental health disorders in the case and requires nexus between crime and conviction.
 - ❖ There is no requirement for a nexus between the crime and the mental illness.

Caselaw

- 6/11/24 – unpub *St v. Malone* (Div II) – no treatment plan provided.
 - Found that the substance use disorder was not a mental health issue – DSM 5 considers this a mental health issue.



Caselaw

❖ 3/12/24 – unpub *St v. Payment* (Div III)– just a bad decision– court found:

- The judge rejected Payment's request for an MHSA, reasoning that, to be eligible for such a sentencing alternative, a defendant must be “willing to participate” in the program. *Id.* The judge reasoned that:
 - . . . is not able to modulate his behavior and be compliant. That is apparent in .the 475 violations with DOC while he was incarcerated. And it begs the question, how can you treat somebody if they're not able to comply.
 - I don't doubt that he needs treatment, but this alternative is contingent on compliance coming first.

Caselaw

- ❖ 2/21/24 – unpublished Div II *St v. Aaron* – alternative applies to violent offenses.
 - Does not apply to deadly weapon enhancements
- ❖ 7/10/23 – unpub Div I *St v. Colon* – court must meaningfully consider request and review statutory framework.
- ❖ 2/2/23 – unpub Div III *St v. Herndon* – victim’s opinion matters – remedy is to move to withdraw plea.
- ❖ 1/17/23 – unpub Div I *WA v. Montgomery* – COA supported courts “not a compelling case theory.”

PRACTICE TIP

DOCUMENT!

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- Brief each request.
- Include the purposes of the SRA.
- Include a description of the diagnosed disorder from DSM.

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- Brief each request.
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- Include a description of the diagnosed disorder from DSM.

If you have questions for DOC, you should contact CCO Dante Harper. Dante is the main point of contact at DOC for the MHSA.

Dante Harper

dsharper@DOC1.WA.GOV



If you have any defense attorney questions:

Kari Reardon

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(360) 695-1647

