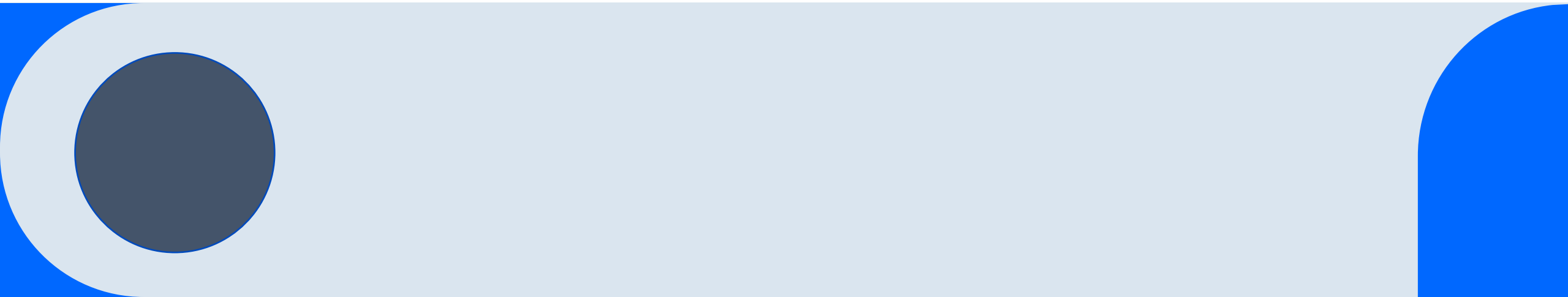
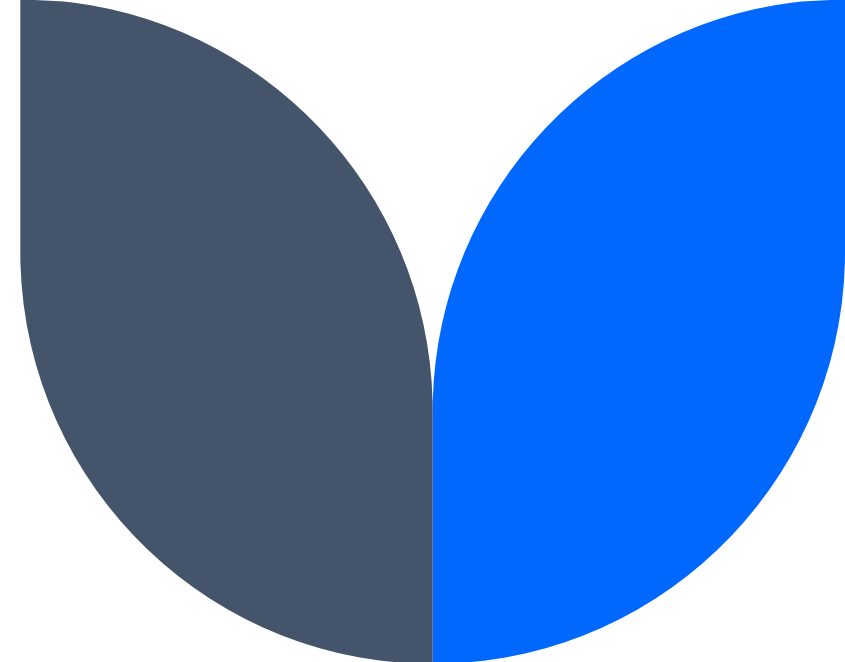




Mental Health Sentencing Alternative

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Introductions

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Learning Objectives

Regardless of your role, the goals for this training are to have you walk out of here with a grasp of the following:

How the sentence alternative works

Who is eligible

Pre-sentence requirements

Collaborative approach

Legislative requirements of all parties

What is the Mental Health Sentencing Alternative?

SECOND SUBSTITUTE SENATE BILL 5293, 3/5/21

SUBSTITUTE SENATE BILL 5588, 6/6/24

2025?

HOW DOES IT WORK?

An MHSA waives imposition of a sentence of confinement in lieu of supervision in the community that includes a requirement to comply with mental health treatment.

Creates “Dual Jurisdiction” supervision (Court and DOC)

Mandates collaboration between all parties

Immediate release – No confinement is ordered



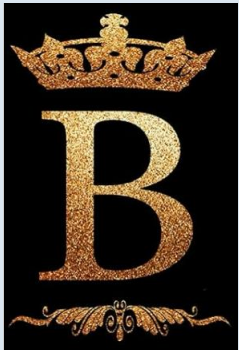
Eligibility



The defendant is convicted of a felony that is not a serious violent offense or sex offense



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



The defendant is diagnosed with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;



The defendant is willing to participate in the sentencing alternative.

Serious Violent Offense

- Murder in the first degree;
- Murder in the second degree;
- Homicide by abuse;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree;
- Assault of a child in the first degree

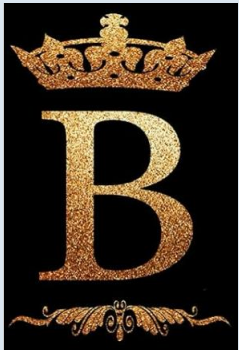
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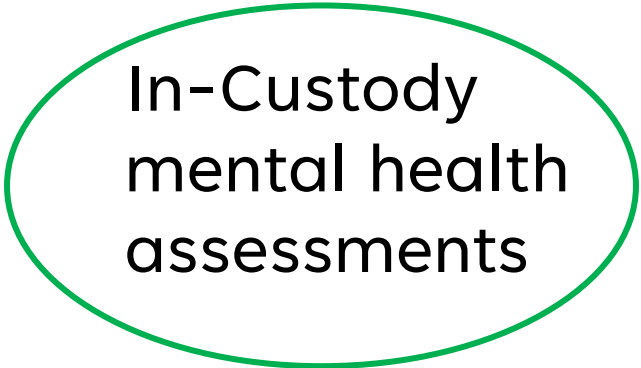
RCW defines serious mental illness as:

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

Other Court actions to determine serious mental illness

To determine whether the defendant has a serious mental illness, the court may rely on information including reports completed pursuant to chapters 71.05 and 10.77 RCW, or other information and records related to mental health services. If insufficient information is available to determine whether a defendant has a serious mental illness, the court may order an examination of the defendant.

The health care authority shall reimburse for the following services provided for individuals participating in the sentence alternative:



In-Custody
mental health
assessments

In-custody
preliminary
treatment plan
development

On-going monitoring of
the defendant's
adherence to the
defendant's treatment
plan and the
requirements of the
sentencing alternative,
including reporting to the
court and the
department.

Eligibility



The defendant is convicted of a felony that is not a serious violent offense or sex offense



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The defendant is diagnosed with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;



The defendant is willing to participate in the sentencing alternative.

Presentence Investigation

To assist the court in its determination, the department shall provide a written report, which shall be in the form of a presentence investigation. Such report may be ordered by the court on the motion of a party prior to conviction if such a report will facilitate negotiations. The court may waive the production of this report if sufficient information is available to the court.

The report must contain a proposed plan for treatment for the defendant's mental illness, including at a minimum:

I. The name and address of a treatment provider that is agreeing to provide treatment to the defendant

Treatment to include an intake evaluation, a psychiatric evaluation, and development of an individualized treatment plan which shall be submitted as soon as possible to the department and the court

II. An agreement by the treatment provider to monitor the progress of the defendant on the sentencing alternative

The provider agrees to notify the department and the court at any time during the duration of the order if reasonable efforts to engage the defendant fail to produce substantial compliance with court-ordered treatment conditions

The report must contain a proposed plan for treatment for the defendant's mental illness, including at a minimum (cont.):

III. A proposed monitoring plan

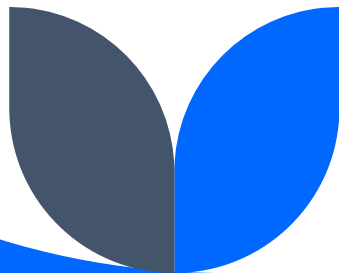
To including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others

IV. Recommended conditions

Crime-related prohibitions and affirmative conditions

V. A valid release of information

To be signed by the defendant, allowing the parties and the department to confirm components of the treatment and monitoring plan



The health care authority shall reimburse for the following services provided for individuals participating in the sentence alternative:

In-Custody
mental health
assessments

In-custody
preliminary
treatment plan
development

On-going monitoring of the defendant's adherence to the defendant's treatment plan and the requirements of the sentencing alternative, including reporting to the court and the department.



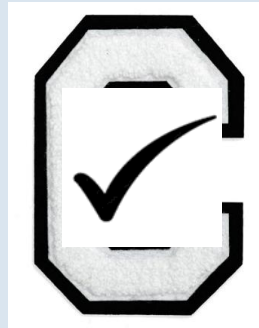
The court shall consider...

The court shall consider the victim's opinion whether the defendant should receive a sentence under this section.

Eligibility



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The defendant is willing to participate in the sentencing alternative.



MENTAL HEALTH SENTENCING ALTERNATIVE AGREEMENT

I acknowledge that the Mental Health Sentencing Alternative requires that I follow all court-imposed conditions per RCW 9.94A.703.

By initialing the following statements, I confirm my understanding and agree to comply:

- _____ I will meet with treatment providers and follow recommendations provided in the individualized treatment plan as initially constituted or subsequently modified by the treatment provider.
- _____ I will take all medications as prescribed, including monitoring of prescribed medication intake if necessary.
- _____ I will comply with all Department of Corrections standard conditions of community custody and all Department-imposed conditions.
- _____ I am responsible for all financial payments of required treatment.
- _____ I will sign and maintain all necessary releases of information for the length of my supervision.

Should I violate any of the conditions listed above, any Department standard or imposed conditions, or any condition of my Judgment and Sentence, I understand that I may be sanctioned by the court or the Department if I am found to have committed the violation(s).

What exactly is the sentence?

The court shall waive imposition of a sentence within the STANDARD RANGE.

Each crime has a “standard range” based on the criminal history of the individual and the seriousness of the offense. This is a range of confinement that the court is obligated to order unless legal criteria are met to satisfy mitigating or aggravating factors or unless a sentence alternative is ordered.

For example: Assault 3 with a score of 2 has a standard range of 4 – 12 months with a midpoint of 8 months.

The court shall impose a term of community custody:

- Between 12 and 24 months if the midpoint of the defendant’s standard range sentence is less than or equal to 36 months;
- Between 12 months and 36 months if the midpoint of the defendant’s standard range sentence is longer than 36 months.

Conditions of Supervision

- a) If the court imposes this sentencing alternative, the court may impose any additional conditions recommended by any of the written reports regarding the defendant.
- b) The court shall impose specific treatment conditions:
 - i. Meet with treatment providers and follow the recommendations provided in the individualized treatment plan as initially constituted or subsequently modified by the treatment provider;
 - ii. Take medications as prescribed, including monitoring of compliance with medication if needed;
 - iii. Refrain from using alcohol and nonprescribed controlled substances if the defendant has a diagnosis of a substance use disorder. The court may order the department to monitor for the use of alcohol or nonprescribed controlled substances if the court prohibits use of those substances.

Once sentenced, the defendant is released from custody. The court may delay release in order to facilitate adherence to the plan for treatment. This may include:

Transfer:

The court may delay release to allow a defendant to transfer directly to an inpatient treatment facility or supportive housing provider

Transportation:

The court may delay release to ensure appropriate transportation is established and available

Services:

The court may delay release so that release can occur during business hours on a weekday when services are available



So, in the end what does supervision under the MHSA look like?

Supervision of a Mental Health Sentence Alternative is fundamentally different than most other supervision. The MHSA separates the monitoring of the treatment requirements from the rest of the conditions. The concept is that serious mental illnesses can be difficult to manage and people who experience them may have ups and downs. The MHSA attempts to address these issues in a less formal way so that the individual doesn't need to continuously end up back before the court.

There are 2 parts to supervision under the MHSA

Collaborative Part

Treatment issues arising during supervision shall be discussed collaboratively. The team shall jointly determine intervention for violation of a treatment condition.

“Normal” DOC Part

DOC manages all other aspects of the sentence including reporting, drug use/testing, other court-ordered conditions, and DOC-ordered conditions, according to established DOC supervision policy.

Collaborative Team

In an MHSA, the Court orders collaboration between the CCO, the treatment provider, and any representative of the individual's medical assistance plan to help manage the client and keep them engaged and compliant with ordered treatment. The philosophy is that if the team collaborates around this goal, together they can work with the client to manage lapses in the individual's treatment compliance and return them to a place of substantial compliance. When the team is able to work with the person to return them to a place of substantial compliance, appearing back before the Court to address "violations" is avoided. It is expected that the majority of issues related to treatment can be managed in this way.

Independent Authority

The CCO shall have the authority to address the violation independently if:

- a) The violation is safety related with respect to the defendant or others;
- b) The violation relates to a standard condition for supervision; or
- c) The treatment violation consists of decompensation related to psychosis that presents a risk to the community or the defendant and cannot be mitigated by community intervention. The CCO may intervene with available resources such as a DCR.

The DOC portion of supervision under the MHSA is the same as most other instances of DOC supervision.

- ❖ DOC can impose conditions
- ❖ DOC can give directives
- ❖ The individual is required to report to DOC as directed
- ❖ DOC must be able to access a person's residence
- ❖ DOC can search (person, property, vehicle, residence)
- ❖ DOC can arrest for violations

DOC Policy 390.560 Mental Health Sentence Alternative

DOC Policy specifies that for non-treatment related violation behavior, the CCO is encouraged but not required to consult the Treatment Collaboration Team before addressing the violation of a standard condition.

Depending on the specifics of the behavior, addressing a violation can occur out-of-custody, with a brief incarceration (up to 3 days), or with a longer incarceration (up to 15 days)

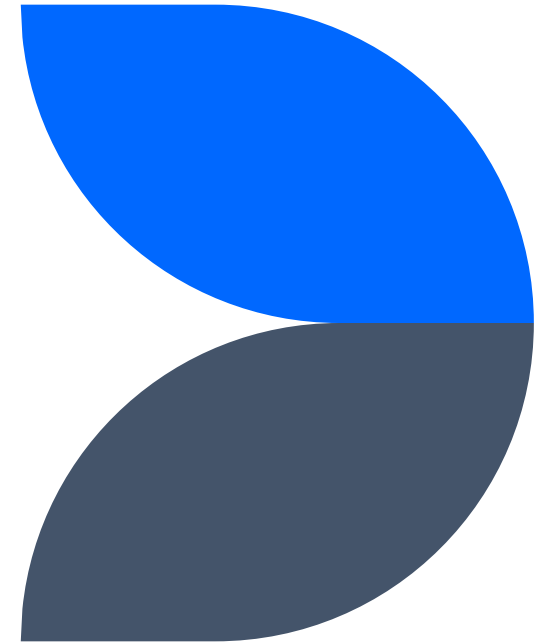
Progress Hearings

The court may schedule progress hearings for the defendant to evaluate the defendant's progress in treatment and compliance with conditions of supervision.

- Before any progress hearing, the department and the treatment provider shall each submit a written report informing the parties of the defendant's progress and compliance with treatment, unless waived by the court.
- The team should collaborate prior to submitting progress updates to the court
- Required treatment interventions taken between court progress hearings shall be reported to the court as a part of the regular progress update to the court.
- DOC response to non-treatment violations should also be reported to the Court.

Who needs to attend these hearings?

At the progress hearing, the court shall hear from the parties regarding the defendant's compliance and may modify the conditions of community custody if the modification serves the interests of justice and the best interests of the defendant.



What happens if an MHSA is revoked?

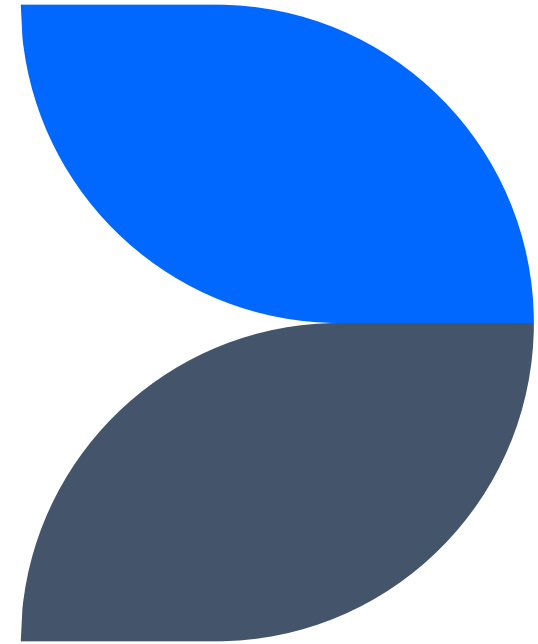
If the court revokes the MHSA, a sentence of confinement within the standard range is imposed. If legally justified, the court can impose a mitigated sentence.

The individual gets credit for any confinement served prior to sentencing (including any competency restoration) as well as all time while in compliance and actively supervised in the community.

No post-release supervision is ordered

Big takeaways

- 1) These cases are already here. You may have some. It's important to know what's at stake for the client and what your agency has agreed to do.
- 2) Collaboration between DOC and treatment is mandatory. We NEED to work together, particularly if a client's compliance begins to slip.
- 3) Communication with each other and with the Court is mandatory. Rescinding a Release of Information needs to be reported to the court and will likely result in a hearing before the judge.
- 4) There could be significant consequences for non-compliance.
- 5) You may be required to appear and speak before the court at a review hearing.



Any tricks/shortcuts?

For compliance reports to the court, work together as a team. DOC submits reports to the Court all the time. Perhaps DOC can gather/include all information and submit all reports together.

Instead of written monthly compliance reports going back and forth, perhaps conversations, emails, etc. can suffice. As long as the information is shared and documented in the notes/system, that could be good enough.

Keep contact information for the attorneys and the court handy. When a review hearing is scheduled, you can ask the attorneys if they need a written report or if the court will waive it.

You may be able to attend review hearings virtually. Talk with the attorneys to see if the court can accommodate.

Work together to create daily structure. Scheduling appointments on different days of the week can fill a calendar with things to do. Embrace the collaboration and work with the client on making appointments with others on the team.

If there's concern about a client relapsing, work together to see if a regular UA/BA testing schedule would help. At a minimum sharing test results among the team can offer some insight into how best to respond.

If there's concern about the state of a client's apartment, perhaps the CCO can conduct a home visit or the case manager can outreach the client (maybe to deliver medication). Then the information can be shared with everyone.

If substance use is causing issues, work with the team to discuss recommending the Court add SUD treatment as a condition. SUD treatment would then be managed by the collaborative team and addressing these issues becomes a team affair.

Questions?

