
HOUSE BILL 1231

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By Representatives O'Brien, Pearson, Lovick, Sells, McDonald, Chase and Ormsby

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1 AN ACT Relating to requiring evaluations for offenders serving
2 terms of incarceration under the special sex offender sentencing
3 alternative; reenacting and amending RCW 9.94A.670; providing an
4 effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are
7 each reenacted and amended to read as follows:

8 (1) Unless the context clearly requires otherwise, the definitions
9 in this subsection apply to this section only.

10 (a) "Sex offender treatment provider" or "treatment provider" means
11 a certified sex offender treatment provider or a certified affiliate
12 sex offender treatment provider as defined in RCW 18.155.020.

13 (b) "Substantial bodily harm" means bodily injury that involves a
14 temporary but substantial disfigurement, or that causes a temporary but
15 substantial loss or impairment of the function of any body part or
16 organ, or that causes a fracture of any body part or organ.

17 (c) "Victim" means any person who has sustained emotional,
18 psychological, physical, or financial injury to person or property as

1 a result of the crime charged. "Victim" also means a parent or
2 guardian of a victim who is a minor child unless the parent or guardian
3 is the perpetrator of the offense.

4 (2) An offender is eligible for the special sex offender sentencing
5 alternative if:

6 (a) The offender has been convicted of a sex offense other than a
7 violation of RCW 9A.44.050 or a sex offense that is also a serious
8 violent offense;

9 (b) The offender has no prior convictions for a sex offense as
10 defined in RCW 9.94A.030 or any other felony sex offenses in this or
11 any other state;

12 (c) The offender has no prior adult convictions for a violent
13 offense that was committed within five years of the date the current
14 offense was committed;

15 (d) The offense did not result in substantial bodily harm to the
16 victim;

17 (e) The offender had an established relationship with, or
18 connection to, the victim such that the sole connection with the victim
19 was not the commission of the crime; and

20 (f) The offender's standard sentence range for the offense includes
21 the possibility of confinement for less than eleven years.

22 (3) If the court finds the offender is eligible for this
23 alternative, the court, on its own motion or the motion of the state or
24 the offender, may order an examination to determine whether the
25 offender is amenable to treatment.

26 (a) The report of the examination shall include at a minimum the
27 following:

28 (i) The offender's version of the facts and the official version of
29 the facts;

30 (ii) The offender's offense history;

31 (iii) An assessment of problems in addition to alleged deviant
32 behaviors;

33 (iv) The offender's social and employment situation; and

34 (v) Other evaluation measures used.

35 The report shall set forth the sources of the examiner's
36 information.

37 (b) The examiner shall assess and report regarding the offender's

1 amenability to treatment and relative risk to the community. A
2 proposed treatment plan shall be provided and shall include, at a
3 minimum:

4 (i) Frequency and type of contact between offender and therapist;

5 (ii) Specific issues to be addressed in the treatment and
6 description of planned treatment modalities;

7 (iii) Monitoring plans, including any requirements regarding living
8 conditions, lifestyle requirements, and monitoring by family members
9 and others;

10 (iv) Anticipated length of treatment; and

11 (v) Recommended crime-related prohibitions and affirmative
12 conditions, which must include, to the extent known, an identification
13 of specific activities or behaviors that are precursors to the
14 offender's offense cycle, including, but not limited to, activities or
15 behaviors such as viewing or listening to pornography or use of alcohol
16 or controlled substances.

17 (c) The court on its own motion may order, or on a motion by the
18 state shall order, a second examination regarding the offender's
19 amenability to treatment. The examiner shall be selected by the party
20 making the motion. The offender shall pay the cost of any second
21 examination ordered unless the court finds the defendant to be indigent
22 in which case the state shall pay the cost.

23 (4) After receipt of the reports, the court shall consider whether
24 the offender and the community will benefit from use of this
25 alternative, consider whether the alternative is too lenient in light
26 of the extent and circumstances of the offense, consider whether the
27 offender has victims in addition to the victim of the offense, consider
28 whether the offender is amenable to treatment, consider the risk the
29 offender would present to the community, to the victim, or to persons
30 of similar age and circumstances as the victim, and consider the
31 victim's opinion whether the offender should receive a treatment
32 disposition under this section. The court shall give great weight to
33 the victim's opinion whether the offender should receive a treatment
34 disposition under this section. If the sentence imposed is contrary to
35 the victim's opinion, the court shall enter written findings stating
36 its reasons for imposing the treatment disposition. The fact that the
37 offender admits to his or her offense does not, by itself, constitute
38 amenability to treatment. If the court determines that this

1 alternative is appropriate, the court shall then impose a sentence or,
2 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
3 standard sentence range. If the sentence imposed is less than eleven
4 years of confinement, the court may suspend the execution of the
5 sentence and impose the following conditions of suspension:

6 (a)(i) The court shall order the offender to serve a term of
7 confinement of up to twelve months or the maximum term within the
8 standard range, whichever is less. The court may order the offender to
9 serve a term of confinement greater than twelve months or the maximum
10 term within the standard range based on the presence of an aggravating
11 circumstance listed in RCW 9.94A.535(2). In no case shall the term of
12 confinement exceed the statutory maximum sentence for the offense. The
13 court may order the offender to serve all or part of his or her term of
14 confinement in partial confinement. An offender sentenced to a term of
15 confinement under this subsection is not eligible for earned release
16 under RCW 9.92.151 or 9.94A.728.

17 (ii)(A) The court shall order an examination of the offender prior
18 to his or her release from confinement. When performing the
19 examination, the examiner shall consult with any facility in which the
20 offender has served his or her confinement. The examiner shall report
21 to the court any modifications the examiner recommends to the
22 conditions imposed under (d) of this subsection and subsection (5) of
23 this section.

24 (B) After receiving the examination report, the court may conduct
25 a hearing to determine whether any of the conditions imposed under (d)
26 of this subsection and subsection (5) of this section should be
27 modified. At least fourteen days prior to the hearing, notice of the
28 hearing shall be given to the victim. The victim shall be given the
29 opportunity to make statements to the court regarding the offender's
30 supervision and treatment. At the hearing, the court may modify any of
31 the conditions imposed under (d) of this subsection and subsection (5)
32 of this section.

33 (b) The court shall place the offender on community custody for the
34 length of the suspended sentence, the length of the maximum term
35 imposed pursuant to RCW 9.94A.712, or three years, whichever is
36 greater, and require the offender to comply with any conditions imposed
37 by the department under RCW 9.94A.720.

1 (c) The court shall order treatment for any period up to five years
2 in duration. The court, in its discretion, shall order outpatient sex
3 offender treatment or inpatient sex offender treatment, if available.
4 A community mental health center may not be used for such treatment
5 unless it has an appropriate program designed for sex offender
6 treatment. The offender shall not change sex offender treatment
7 providers or treatment conditions without first notifying the
8 prosecutor, the community corrections officer, and the court. If any
9 party or the court objects to a proposed change, the offender shall not
10 change providers or conditions without court approval after a hearing.

11 (d) As conditions of the suspended sentence, the court shall impose
12 specific prohibitions and affirmative conditions relating to the known
13 precursor activities or behaviors identified in the proposed treatment
14 plan under subsection (3)(b)(v) of this section or identified in an
15 annual review under subsection (7)(b) of this section.

16 (5) As conditions of the suspended sentence, the court may impose
17 one or more of the following:

18 (a) Crime-related prohibitions;

19 (b) Require the offender to devote time to a specific employment or
20 occupation;

21 (c) Require the offender to remain within prescribed geographical
22 boundaries and notify the court or the community corrections officer
23 prior to any change in the offender's address or employment;

24 (d) Require the offender to report as directed to the court and a
25 community corrections officer;

26 (e) Require the offender to pay all court-ordered legal financial
27 obligations as provided in RCW 9.94A.030;

28 (f) Require the offender to perform community restitution work; or

29 (g) Require the offender to reimburse the victim for the cost of
30 any counseling required as a result of the offender's crime.

31 (6) At the time of sentencing, the court shall set a treatment
32 termination hearing for three months prior to the anticipated date for
33 completion of treatment.

34 (7)(a) The sex offender treatment provider shall submit quarterly
35 reports on the offender's progress in treatment to the court and the
36 parties. The report shall reference the treatment plan and include at
37 a minimum the following: Dates of attendance, offender's compliance

1 with requirements, treatment activities, the offender's relative
2 progress in treatment, and any other material specified by the court at
3 sentencing.

4 (b) The court shall conduct a hearing on the offender's progress in
5 treatment at least once a year. At least fourteen days prior to the
6 hearing, notice of the hearing shall be given to the victim. The
7 victim shall be given the opportunity to make statements to the court
8 regarding the offender's supervision and treatment. At the hearing,
9 the court may modify conditions of community custody including, but not
10 limited to, crime-related prohibitions and affirmative conditions
11 relating to activities and behaviors identified as part of, or relating
12 to precursor activities and behaviors in, the offender's offense cycle
13 or revoke the suspended sentence.

14 (8) At least fourteen days prior to the treatment termination
15 hearing, notice of the hearing shall be given to the victim. The
16 victim shall be given the opportunity to make statements to the court
17 regarding the offender's supervision and treatment. Prior to the
18 treatment termination hearing, the treatment provider and community
19 corrections officer shall submit written reports to the court and
20 parties regarding the offender's compliance with treatment and
21 monitoring requirements, and recommendations regarding termination from
22 treatment, including proposed community custody conditions. The court
23 may order an evaluation regarding the advisability of termination from
24 treatment by a sex offender treatment provider who may not be the same
25 person who treated the offender under subsection (4) of this section or
26 any person who employs, is employed by, or shares profits with the
27 person who treated the offender under subsection (4) of this section
28 unless the court has entered written findings that such evaluation is
29 in the best interest of the victim and that a successful evaluation of
30 the offender would otherwise be impractical. The offender shall pay
31 the cost of the evaluation. At the treatment termination hearing the
32 court may: (a) Modify conditions of community custody, and either (b)
33 terminate treatment, or (c) extend treatment in two-year increments for
34 up to the remaining period of community custody.

35 (9)(a) If a violation of conditions other than a second violation
36 of the prohibitions or affirmative conditions relating to precursor
37 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
38 this section occurs during community custody, the department shall

1 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
2 the violation to the court and recommend revocation of the suspended
3 sentence as provided for in subsections (6) and (8) of this section.

4 (b) If a second violation of the prohibitions or affirmative
5 conditions relating to precursor behaviors or activities imposed under
6 subsection (4)(d) or (7)(b) of this section occurs during community
7 custody, the department shall refer the violation to the court and
8 recommend revocation of the suspended sentence as provided in
9 subsection (10) of this section.

10 (10) The court may revoke the suspended sentence at any time during
11 the period of community custody and order execution of the sentence if:

12 (a) The offender violates the conditions of the suspended sentence, or
13 (b) the court finds that the offender is failing to make satisfactory
14 progress in treatment. All confinement time served during the period
15 of community custody shall be credited to the offender if the suspended
16 sentence is revoked.

17 (11) The offender's sex offender treatment provider may not be the
18 same person who examined the offender under subsection (3) of this
19 section or any person who employs, is employed by, or shares profits
20 with the person who examined the offender under subsection (3) of this
21 section, unless the court has entered written findings that such
22 treatment is in the best interests of the victim and that successful
23 treatment of the offender would otherwise be impractical. Examinations
24 and treatment ordered pursuant to this subsection shall only be
25 conducted by certified sex offender treatment providers or certified
26 affiliate sex offender treatment providers under chapter 18.155 RCW
27 unless the court finds that:

28 (a) The offender has already moved to another state or plans to
29 move to another state for reasons other than circumventing the
30 certification requirements; or

31 (b)(i) No certified sex offender treatment providers or certified
32 affiliate sex offender treatment providers are available for treatment
33 within a reasonable geographical distance of the offender's home; and

34 (ii) The evaluation and treatment plan comply with this section and
35 the rules adopted by the department of health.

36 (12) If the offender is less than eighteen years of age when the
37 charge is filed, the state shall pay for the cost of initial evaluation
38 and treatment.

1 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 July 1, 2005.

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