
HOUSE BILL 2003

State of Washington

59th Legislature

2005 Regular Session

By Representatives McDonald and Pearson

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1 AN ACT Relating to the special sex offender sentencing alternative;
2 and reenacting and amending RCW 9.94A.670.

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

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

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

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

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

15 (c) "Victim" means any person who has sustained emotional,
16 psychological, physical, or financial injury to person or property as
17 a result of the crime charged. "Victim" also means a parent or
18 guardian of a victim who is a minor child unless the parent or guardian
19 is the perpetrator of the offense.

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

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

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

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

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

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

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

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

23 (a) The report of the examination shall include at a minimum the
24 following:

25 (i) The offender's version of the facts and the official version of
26 the facts;

27 (ii) The offender's offense history;

28 (iii) An assessment of problems in addition to alleged deviant
29 behaviors;

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

31 (v) Other evaluation measures used.

32 The report shall set forth the sources of the examiner's
33 information.

34 (b) The examiner shall assess and report regarding the offender's
35 amenability to treatment and relative risk to the community. A
36 proposed treatment plan shall be provided and shall include, at a
37 minimum:

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

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

3 (iii) Monitoring plans, including any requirements regarding living
4 conditions, lifestyle requirements, and monitoring by family members
5 and others;

6 (iv) Anticipated length of treatment; and

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

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

19 (4) After receipt of the reports, the court shall consider whether
20 the offender and the community will benefit from use of this
21 alternative, consider whether the alternative is too lenient in light
22 of the extent and circumstances of the offense, consider whether the
23 offender has victims in addition to the victim of the offense, consider
24 whether the offender is amenable to treatment, consider the risk the
25 offender would present to the community, to the victim, or to persons
26 of similar age and circumstances as the victim, and consider the
27 victim's opinion whether the offender should receive a treatment
28 disposition under this section. The court shall give great weight to
29 the victim's opinion whether the offender should receive a treatment
30 disposition under this section. If the sentence imposed is contrary to
31 the victim's opinion, the court shall enter written findings stating
32 its reasons for imposing the treatment disposition. The fact that the
33 offender admits to his or her offense does not, by itself, constitute
34 amenability to treatment. If the court determines that this
35 alternative is appropriate, the court shall then impose a sentence or,
36 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
37 standard sentence range. If the sentence imposed is less than eleven

1 years of confinement, the court may suspend the execution of the
2 sentence and impose the following conditions of suspension:

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

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

19 (c) The court shall order treatment for any period up to five years
20 in duration. The court, in its discretion, shall order outpatient sex
21 offender treatment or inpatient sex offender treatment, if available.
22 A community mental health center may not be used for such treatment
23 unless it has an appropriate program designed for sex offender
24 treatment. The offender shall not change sex offender treatment
25 providers or treatment conditions without first notifying the
26 prosecutor, the community corrections officer, and the court. If any
27 party or the court objects to a proposed change, the offender shall not
28 change providers or conditions without court approval after a hearing.

29 (d) As conditions of the suspended sentence, the court shall impose
30 specific prohibitions and affirmative conditions relating to the known
31 precursor activities or behaviors identified in the proposed treatment
32 plan under subsection (3)(b)(v) of this section or identified in an
33 annual review under subsection (~~((+7))~~) (8)(b) of this section.

34 (5) The court shall impose the following as conditions of the
35 suspended sentence:

36 (a) The offender shall not view, listen to, or have any access to
37 pornography; and

1 (b) The offender shall not knowingly come within, or remain within,
2 two hundred yards of the victim or the victim's residence.

3 (6) As conditions of the suspended sentence, the court may impose
4 one or more of the following:

5 (a) Crime-related prohibitions;

6 (b) Require the offender to devote time to a specific employment or
7 occupation;

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

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

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

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

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

18 ~~((6))~~ (7) At the time of sentencing, the court shall set a
19 treatment termination hearing for three months prior to the anticipated
20 date for completion of treatment.

21 ~~((7))~~ (8)(a) The sex offender treatment provider shall submit
22 quarterly reports on the offender's progress in treatment to the court
23 and the parties. The report shall reference the treatment plan and
24 include at a minimum the following: Dates of attendance, offender's
25 compliance with requirements, treatment activities, the offender's
26 relative progress in treatment, and any other material specified by the
27 court at sentencing.

28 (b) The court shall conduct a hearing on the offender's progress in
29 treatment at least once a year. At least fourteen days prior to the
30 hearing, notice of the hearing shall be given to the victim. The
31 victim shall be given the opportunity to make statements to the court
32 regarding the offender's supervision and treatment. At the hearing,
33 the court may modify conditions of community custody including, but not
34 limited to, crime-related prohibitions and affirmative conditions
35 relating to activities and behaviors identified as part of, or relating
36 to precursor activities and behaviors in, the offender's offense cycle
37 or revoke the suspended sentence.

1 ~~((+8+))~~ (9) At least fourteen days prior to the treatment
2 termination hearing, notice of the hearing shall be given to the
3 victim. The victim shall be given the opportunity to make statements
4 to the court regarding the offender's supervision and treatment. Prior
5 to the treatment termination hearing, the treatment provider and
6 community corrections officer shall submit written reports to the court
7 and parties regarding the offender's compliance with treatment and
8 monitoring requirements, and recommendations regarding termination from
9 treatment, including proposed community custody conditions. The court
10 may order an evaluation regarding the advisability of termination from
11 treatment by a sex offender treatment provider who may not be the same
12 person who treated the offender under subsection (4) of this section or
13 any person who employs, is employed by, or shares profits with the
14 person who treated the offender under subsection (4) of this section
15 unless the court has entered written findings that such evaluation is
16 in the best interest of the victim and that a successful evaluation of
17 the offender would otherwise be impractical. The offender shall pay
18 the cost of the evaluation. At the treatment termination hearing the
19 court may: (a) Modify conditions of community custody, and either (b)
20 terminate treatment, or (c) extend treatment in two-year increments for
21 up to the remaining period of community custody.

22 ~~((+9+))~~ (10)(a) If a violation of conditions other than a violation
23 of subsection (5) of this section or a second violation of the
24 prohibitions or affirmative conditions relating to precursor behaviors
25 or activities imposed under subsection (4)(d) or ~~((+7+))~~ (8)(b) of this
26 section occurs during community custody, the department shall either
27 impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the
28 violation to the court and recommend revocation of the suspended
29 sentence as provided for in subsections ~~((+6+))~~ (7) and ~~((+8+))~~ (9) of
30 this section.

31 (b) If a second violation of the prohibitions or affirmative
32 conditions relating to precursor behaviors or activities imposed under
33 subsection (4)(d) or ~~((+7+))~~ (8)(b) of this section occurs during
34 community custody, the department shall refer the violation to the
35 court and recommend revocation of the suspended sentence as provided in
36 subsection ~~((+10+))~~ (11) of this section.

37 ~~((+10+))~~ (c) If a violation of conditions imposed under subsection
38 (5) of this section occurs during community custody, the department

1 shall refer the violation to the court and recommend revocation of the
2 suspended sentence as provided in subsection (11) of this section. If
3 a second violation of conditions imposed under subsection (5) of this
4 section occurs during community custody, the department shall refer the
5 violation to the court and the court shall order revocation of the
6 suspended sentence.

7 (11) The court may revoke the suspended sentence at any time during
8 the period of community custody and order execution of the sentence if:
9 (a) The offender violates the conditions of the suspended sentence, or
10 (b) the court finds that the offender is failing to make satisfactory
11 progress in treatment. All confinement time served during the period
12 of community custody shall be credited to the offender if the suspended
13 sentence is revoked.

14 ((+11+)) (12) The offender's sex offender treatment provider may
15 not be the same person who examined the offender under subsection (3)
16 of this section or any person who employs, is employed by, or shares
17 profits with the person who examined the offender under subsection (3)
18 of this section, unless the court has entered written findings that
19 such treatment is in the best interests of the victim and that
20 successful treatment of the offender would otherwise be impractical.
21 Examinations and treatment ordered pursuant to this subsection shall
22 only be conducted by certified sex offender treatment providers or
23 certified affiliate sex offender treatment providers under chapter
24 18.155 RCW unless the court finds that:

25 (a) The offender has already moved to another state or plans to
26 move to another state for reasons other than circumventing the
27 certification requirements; or

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

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

33 ((+12+)) (13) If the offender is less than eighteen years of age
34 when the charge is filed, the state shall pay for the cost of initial
35 evaluation and treatment.

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