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SECOND SUBSTITUTE HOUSE BILL 2015

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State of Washington                      59th Legislature                      2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Kagi, O'Brien, Hinkle, Fromhold, Darneille, Upthegrove, Tom, Kenney and Dickerson)

READ FIRST TIME 03/07/05.

1            AN ACT Relating to judicially supervised substance abuse treatment;  
2 reenacting and amending RCW 9.94A.660; creating a new section; and  
3 providing an effective date.

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

5            **Sec. 1.** RCW 9.94A.660 and 2002 c 290 s 20 and 2002 c 175 s 10 are  
6 each reenacted and amended to read as follows:

7            (1) An offender is eligible for the special drug offender  
8 sentencing alternative if:

9            (a) The offender is convicted of a felony that is not a violent  
10 offense or sex offense and the violation does not involve a sentence  
11 enhancement under RCW 9.94A.533 (3) or (4);

12            (b) The offender has no current or prior convictions for a sex  
13 offense at any time or violent offense within ten years before  
14 conviction of the current offense, in this state, another state, or the  
15 United States;

16            (c) For a violation of the Uniform Controlled Substances Act under  
17 chapter 69.50 RCW or a criminal solicitation to commit such a violation  
18 under chapter 9A.28 RCW, the offense involved only a small quantity of

1 the particular controlled substance as determined by the judge upon  
2 consideration of such factors as the weight, purity, packaging, sale  
3 price, and street value of the controlled substance; ~~((and))~~

4 (d) The offender has not been found by the United States attorney  
5 general to be subject to a deportation detainer or order and does not  
6 become subject to a deportation order during the period of the  
7 sentence; and

8 (e) The standard sentence range for the current offense is greater  
9 than one year.

10 (2) A motion for a sentence under this section may be made by the  
11 court, the offender, or the state. If ~~((the standard sentence range is~~  
12 ~~greater than one year and))~~ the sentencing court determines that the  
13 offender is eligible for this alternative ~~((and that))~~, the court may  
14 order an examination of the offender. The examination shall, at a  
15 minimum, address the following issues:

16 (a) Whether the offender suffers from drug addiction;

17 (b) Whether the addiction is such that there is a probability that  
18 criminal behavior will occur in the future;

19 (c) Whether effective treatment for the offender's addiction is  
20 available from a provider that has been licensed or certified by the  
21 division of alcohol and substance abuse of the department of social and  
22 health services; and

23 (d) Whether the offender and the community will benefit from the  
24 use of the alternative~~((, the judge may)).~~

25 (3) The examination report must contain:

26 (a) Information on the issues required to be addressed in  
27 subsection (2) of this section; and

28 (b) A proposed treatment plan that must, at a minimum, contain:

29 (i) A proposed treatment provider that has been licensed or  
30 certified by the division of alcohol and substance abuse of the  
31 department of social and health services;

32 (ii) The recommended frequency and length of treatment, including  
33 both residential chemical dependency treatment and treatment in the  
34 community;

35 (iii) A proposed monitoring plan, including any requirements  
36 regarding living conditions, lifestyle requirements, and monitoring by  
37 family members and others; and

1 (iv) Recommended crime-related prohibitions and affirmative  
2 conditions.

3 (4) After receipt of the examination report, if the court  
4 determines that a sentence under this section is appropriate, the court  
5 shall waive imposition of a sentence within the standard sentence range  
6 and impose a sentence ~~((that must include))~~ consisting of either a  
7 prison-based alternative under subsection (5) of this section or a  
8 community-based alternative under subsection (6) of this section.

9 (5) The prison-based alternative shall include:

10 (a) A period of total confinement in a state facility for one-half  
11 of the midpoint of the standard sentence range. During incarceration  
12 in the state facility, offenders sentenced under this subsection shall  
13 undergo a comprehensive substance abuse assessment and receive, within  
14 available resources, treatment services appropriate for the offender.  
15 The treatment services shall be designed by the division of alcohol and  
16 substance abuse of the department of social and health services, in  
17 cooperation with the department of corrections~~((-))~~;

18 ~~((The court shall also impose:~~

19 ~~(a))~~ (b) The remainder of the midpoint of the standard range as a  
20 term of community custody which must include appropriate substance  
21 abuse treatment in a program that has been approved by the division of  
22 alcohol and substance abuse of the department of social and health  
23 services. If the department finds that conditions have been willfully  
24 violated, the offender may be reclassified to serve the remaining  
25 balance of the original sentence. An offender who fails to complete  
26 the program or who is administratively terminated from the program  
27 shall be reclassified to serve the unexpired term of his or her  
28 sentence as ordered by the sentencing court;

29 ~~((b))~~ (c) Crime-related prohibitions including a condition not to  
30 use illegal controlled substances;

31 ~~((c))~~ (d) A requirement to submit to urinalysis or other testing  
32 to monitor that status; and

33 ~~((d))~~ (e) A term of community custody pursuant to RCW 9.94A.715  
34 to be imposed upon failure to complete or administrative termination  
35 from the special drug offender sentencing alternative program.

36 (6) The community-based alternative shall include:

37 (a) A term of community custody equal to one-half of the midpoint  
38 of the standard sentence range or two years, whichever is greater. The

1 court shall impose, as conditions of community custody, treatment and  
2 other conditions as proposed in the plan under subsection (3)(b) of  
3 this section. The department may impose conditions and sanctions as  
4 authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and  
5 9.94A.740. The court shall schedule a treatment termination hearing  
6 for three months before the expiration of the term of community  
7 custody;

8 (b) Before the treatment termination hearing, the treatment  
9 provider and the department shall submit written reports to the court  
10 and parties regarding the offender's compliance with treatment and  
11 monitoring requirements, and recommendations regarding termination from  
12 treatment. At the hearing, the court may:

13 (i) Authorize the department to terminate the offender's community  
14 custody status on the expiration date determined under (a) of this  
15 subsection; or

16 (ii) Continue the hearing to a date before the expiration date of  
17 community custody, with or without modifying the conditions of  
18 community custody; or

19 (iii) Impose a term of total confinement equal to one-half the  
20 midpoint of the standard sentence range, followed by a term of  
21 community custody under RCW 9.94A.715;

22 (c) If the court imposes a term of total confinement under (b)(iii)  
23 of this subsection, the department shall, within available resources,  
24 make chemical dependency assessment and treatment services available to  
25 the offender during the terms of total confinement and community  
26 custody.

27 (7) If the court imposes a sentence under this section, the court  
28 may prohibit the offender from using alcohol or controlled substances  
29 and may require that the monitoring for controlled substances be  
30 conducted by the department or by a treatment alternatives to street  
31 crime program or a comparable court or agency-referred program. The  
32 offender may be required to pay thirty dollars per month while on  
33 community custody to offset the cost of monitoring. In addition, the  
34 court ((shall)) may impose ((three or more)) any of the following  
35 conditions:

36 ((+i)) (a) Devote time to a specific employment or training;

37 ((+ii)) (b) Remain within prescribed geographical boundaries and

1 notify the court or the community corrections officer before any change  
2 in the offender's address or employment;

3 ~~((+iii))~~ (c) Report as directed to a community corrections  
4 officer;

5 ~~((+iv))~~ (d) Pay all court-ordered legal financial obligations;

6 ~~((+v))~~ (e) Perform community restitution work;

7 ~~((+vi))~~ (f) Stay out of areas designated by the sentencing court;

8 ~~((+vii))~~ (g) Such other conditions as the court may require such  
9 as affirmative conditions.

10 ~~((+3))~~ (8)(a) The court may bring any offender sentenced under  
11 this section back into court at any time on its own initiative to  
12 evaluate the offender's progress in treatment or to determine if any  
13 violations of the conditions of the sentence have occurred.

14 (b) If the offender is brought back to court, the court may modify  
15 the terms of the community custody or impose sanctions under (c) of  
16 this subsection.

17 (c) The court may order the offender to serve a term of total  
18 confinement within the standard range of the offender's current offense  
19 at any time during the period of community custody if the offender  
20 violates the conditions of the sentence or if the offender is failing  
21 to make satisfactory progress in treatment.

22 (d) An offender ordered to serve a term of total confinement under  
23 (c) of this subsection shall receive credit for any time previously  
24 served under this section.

25 (9) If ~~((the))~~ an offender ~~((violates any of the sentence~~  
26 ~~conditions in subsection (2) of this section or))~~ sentenced to the  
27 prison-based alternative under subsection (5) of this section is found  
28 by the United States attorney general to be subject to a deportation  
29 order, a ~~((violation))~~ hearing shall be held by the department unless  
30 waived by the offender(~~-~~

31 ~~((a))~~ ~~If the department finds that conditions have been willfully~~  
32 ~~violated, the offender may be reclassified to serve the remaining~~  
33 ~~balance of the original sentence.~~

34 ~~((b))~~, and, if the department finds that the offender is subject to  
35 a valid deportation order, the department may administratively  
36 terminate the offender from the program and reclassify the offender to  
37 serve the remaining balance of the original sentence.

1       ~~((4) The department shall determine the rules for calculating the~~  
2 ~~value of a day fine based on the offender's income and reasonable~~  
3 ~~obligations which the offender has for the support of the offender and~~  
4 ~~any dependents. These rules shall be developed in consultation with~~  
5 ~~the administrator for the courts, the office of financial management,~~  
6 ~~and the commission.~~

7       ~~(5)) (10) An offender ((who fails to complete the special drug~~  
8 ~~offender sentencing alternative program or who is administratively~~  
9 ~~terminated from the program shall be reclassified to serve the~~  
10 ~~unexpired term of his or her sentence as ordered by the sentencing~~  
11 ~~court and)) sentenced under this section shall be subject to all rules~~  
12 ~~relating to earned release time with respect to any period served in~~  
13 ~~total confinement. ((An offender who violates any conditions of~~  
14 ~~supervision as defined by the department shall be sanctioned.~~  
15 ~~Sanctions may include, but are not limited to, reclassifying the~~  
16 ~~offender to serve the unexpired term of his or her sentence as ordered~~  
17 ~~by the sentencing court. If an offender is reclassified to serve the~~  
18 ~~unexpired term of his or her sentence, the offender shall be subject to~~  
19 ~~all rules relating to earned release time.))~~

20       (11) Costs of examinations and preparing treatment plans under  
21 subsections (2) and (3) of this section, and of community-based  
22 treatment under subsection (6) of this section, may be paid from funds  
23 provided to a county from the criminal justice treatment account under  
24 RCW 70.96A.350, if the county chooses to provide the services directly  
25 or by contract.

26       NEW SECTION. Sec. 2. This act applies to sentences imposed on or  
27 after the effective date of this act.

28       NEW SECTION. Sec. 3. This act takes effect October 1, 2005.

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