
HOUSE BILL 2015

State of Washington 59th Legislature 2005 Regular Session

By Representatives Kagi, O'Brien, Hinkle, Fromhold, Darneille, Upthegrove, Tom, Kenney and Dickerson

Read first time 02/15/2005. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to judicially supervised substance abuse treatment;
2 amending RCW 9.94A.640, 9.94A.737, and 9.94A.501; reenacting and
3 amending RCW 9.94A.660; creating a new section; and providing an
4 effective date.

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

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

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

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

13 (b) The offender has no current or prior convictions for:

14 (i) A sex offense ((or violent offense)) in this state, another
15 state, or the United States; or

16 (ii) A serious violent offense, other than assault in the third
17 degree, in this state, another state, or the United States, within ten
18 years of the date of conviction for the current offense;

1 (c) (~~For a violation of the Uniform Controlled Substances Act~~
2 ~~under chapter 69.50 RCW or a criminal solicitation to commit such a~~
3 ~~violation under chapter 9A.28 RCW, the offense involved only a small~~
4 ~~quantity of the particular controlled substance as determined by the~~
5 ~~judge upon consideration of such factors as the weight, purity,~~
6 ~~packaging, sale price, and street value of the controlled substance))
7 The standard sentence range for the current offense is greater than one
8 year; and~~

9 (d) The offender has not been found by the United States attorney
10 general to be subject to a deportation detainer or order and does not
11 become subject to a deportation order during the period of the
12 sentence.

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

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

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

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

26 (d) Whether the offender and the community will benefit from the
27 use of the alternative(~~, the judge may waive imposition of a sentence~~
28 ~~within the standard sentence range and impose a sentence that must~~
29 ~~include a period of total confinement in a state facility for one half~~
30 ~~of the midpoint of the standard sentence range)).~~

31 (3) The examination report must contain:

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

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

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

1 (ii) The recommended frequency and length of treatment, including
2 both residential chemical dependency treatment and treatment in the
3 community;

4 (iii) A proposed monitoring plan, including any requirements
5 regarding living conditions, lifestyle requirements, and monitoring by
6 family members and others; and

7 (iv) Recommended crime-related prohibitions and affirmative
8 conditions.

9 (4) After receipt of the examination report, if the court
10 determines that a sentence under this section is appropriate:

11 (a) The court shall:

12 (i) Impose a term of confinement in a state facility for at least
13 ninety days, but no more than one-half of the midpoint of the standard
14 range. The court may order that any or all of the term of confinement
15 imposed under this subsection be served in a community-based
16 residential chemical dependency treatment facility licensed or
17 certified by the division of alcohol and substance abuse of the
18 department of social and health services. During ((incarceration)) any
19 term of confinement served in ((the)) a state facility, offenders
20 sentenced under this subsection shall undergo a comprehensive substance
21 abuse assessment and receive, within available resources, treatment
22 services appropriate for the offender. The treatment services shall be
23 designed by the division of alcohol and substance abuse of the
24 department of social and health services, in cooperation with the
25 department of corrections. An offender serving a term of confinement
26 or residential chemical dependency treatment under this subsection is
27 not eligible for earned release credits under RCW 9.94A.728;

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

29 ~~(a) The remainder of the midpoint of the standard range as a term~~
30 ~~of community custody which must include)) (ii) Require the offender,~~
31 ~~after the term of confinement or residential chemical dependency~~
32 ~~treatment, to complete appropriate inpatient or outpatient substance~~
33 ~~abuse treatment in ((a program that has been approved)) the community.~~
34 ~~The treatment program must be licensed or certified by the division of~~
35 ~~alcohol and substance abuse of the department of social and health~~
36 ~~services;~~

37 ~~((b)) (iii) Impose crime-related prohibitions and affirmative~~

1 conditions including a condition not to use illegal controlled
2 substances;

3 ~~((c))~~ (iv) Impose a requirement to submit to urinalysis or other
4 testing to monitor that ~~((status))~~ the offender is not using illegal
5 controlled substances or any other substances prohibited by the court.
6 The court may require that the monitoring be conducted by the
7 department, by a treatment alternatives to street crime program, or by
8 a comparable court or agency-referred program. The court may require
9 the offender to pay thirty dollars per month to offset the cost of
10 monitoring; ~~((and~~

11 ~~(d))~~ (v) Impose a term of community custody ~~((pursuant to RCW~~
12 9.94A.715 to be imposed upon failure to complete or administrative
13 termination from the special drug offender sentencing alternative
14 program.

15 ~~The court may prohibit the offender from using alcohol or~~
16 ~~controlled substances and may require that the monitoring for~~
17 ~~controlled substances be conducted by the department or by a treatment~~
18 ~~alternatives to street crime program or a comparable court or agency-~~
19 ~~referred program. The offender may be required to pay thirty dollars~~
20 ~~per month while on community custody to offset the cost of monitoring))~~
21 for the maximum of the standard sentence range or two years, whichever
22 is greater. The conditions of the community custody shall include the
23 conditions imposed under this section and conditions imposed by the
24 department under RCW 9.94A.720; and

25 (vi) Schedule a treatment termination hearing for three months
26 prior to the anticipated completion of treatment.

27 (b) In addition, the court ~~((shall))~~ may impose ~~((three or more))~~
28 any of the following conditions:

- 29 (i) Devote time to a specific employment or training;
- 30 (ii) Remain within prescribed geographical boundaries and notify
31 the court or the community corrections officer before any change in the
32 offender's address or employment;
- 33 (iii) Report as directed to a community corrections officer;
- 34 (iv) Pay all court-ordered legal financial obligations;
- 35 (v) Perform community restitution work;
- 36 (vi) Stay out of areas designated by the sentencing court;
- 37 (vii) Such other conditions as the court may require such as
38 affirmative conditions.

1 ~~((3))~~ (5) The department and the treatment provider shall submit
2 quarterly reports to the court on the offender's progress in treatment
3 and in the community. The report shall, at a minimum, include: Dates
4 of attendance at treatment, the offender's compliance with the
5 conditions of the sentence, treatment activities, the offender's
6 progress in treatment, and any other material specified by the court at
7 sentencing.

8 (6)(a) Prior to 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.

13 (b) At the treatment termination hearing, the court may:

14 (i) Modify the conditions of the community custody;

15 (ii) Terminate treatment; or

16 (iii) Extend treatment for up to the remaining period of community
17 custody.

18 (7) If the offender violates any of the sentence conditions (~~in~~
19 subsection (2) of this section)) or is found by the United States
20 attorney general to be subject to a deportation order, a violation
21 hearing shall be held by the department unless waived by the offender.

22 (a) If the department finds that conditions have been willfully
23 violated, the (~~offender may be reclassified to serve the remaining~~
24 balance of the original sentence)) department may impose sanctions
25 under RCW 9.94A.737(2)(e).

26 (b) If the department finds that the offender is subject to a valid
27 deportation order, the department (~~may administratively terminate the~~
28 offender from the program and reclassify the offender to serve the
29 remaining balance of the original sentence.

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

36 ~~(5) An offender who fails to complete the special drug offender~~
37 ~~sentencing alternative program or who is administratively terminated~~
38 ~~from the program shall be reclassified to serve the unexpired term of~~

1 ~~his or her sentence as ordered by the sentencing court and shall be~~
2 ~~subject to all rules relating to earned release time. An offender who~~
3 ~~violates any conditions of supervision as defined by the department~~
4 ~~shall be sanctioned. Sanctions may include, but are not limited to,~~
5 ~~reclassifying the offender to serve the unexpired term of his or her~~
6 ~~sentence as ordered by the sentencing court. If an offender is~~
7 ~~reclassified to serve the unexpired term of his or her sentence, the~~
8 ~~offender shall be subject to all rules relating to earned release~~
9 ~~time)) shall refer the offender to the court.~~

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

14 (9) If the offender is brought back to court under subsection (7)
15 or (8) of this section, the court may modify the terms of the community
16 custody or impose sanctions under subsection (10) of this section.

17 (10) 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, if the offender is subject to
21 a valid deportation order, or if the court finds that the offender is
22 failing to make satisfactory progress in treatment. Once an offender
23 has served a term of confinement imposed under this subsection, he or
24 she shall be deemed to have completed his or her sentence under this
25 section.

26 (11) If an offender completes the sentence imposed under this
27 section without being subject to total confinement under subsection
28 (10) of this section, the department shall notify the court. After
29 receiving notification from the department under this subsection, the
30 court shall vacate the record of conviction under RCW 9.94A.640(3) for
31 an offender who successfully complies with all of the conditions of the
32 sentence imposed under this section, unless the court has ordered the
33 offender to serve a term of total confinement under subsection (10) of
34 this section, in which case the offender's conviction may only be
35 vacated under RCW 9.94A.640 (1) and (2).

36 **Sec. 2.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
37 as follows:

1 (1) Every offender who has been discharged under RCW 9.94A.637 may
2 apply to the sentencing court for a vacation of the offender's record
3 of conviction. If the court finds the offender meets the tests
4 prescribed in subsection (2) of this section, the court may clear the
5 record of conviction by: (a) Permitting the offender to withdraw the
6 offender's plea of guilty and to enter a plea of not guilty; or (b) if
7 the offender has been convicted after a plea of not guilty, by the
8 court setting aside the verdict of guilty; and (c) by the court
9 dismissing the information or indictment against the offender.

10 (2) An offender may not have the record of conviction cleared if:
11 (a) There are any criminal charges against the offender pending in any
12 court of this state or another state, or in any federal court; (b) the
13 offense was a violent offense as defined in RCW 9.94A.030; (c) the
14 offense was a crime against persons as defined in RCW 43.43.830; (d)
15 the offender has been convicted of a new crime in this state, another
16 state, or federal court since the date of the offender's discharge
17 under RCW 9.94A.637; (e) the offense is a class B felony and less than
18 ten years have passed since the date the applicant was discharged under
19 RCW 9.94A.637; and (f) the offense was a class C felony and less than
20 five years have passed since the date the applicant was discharged
21 under RCW 9.94A.637.

22 (3) Notwithstanding subsections (1) and (2) of this section, an
23 offender who successfully complies with all the conditions of a
24 sentence imposed under RCW 9.94A.660 shall have the record of the
25 conviction sentenced under RCW 9.94A.660 automatically vacated, unless
26 the court has ordered the offender to serve a term of confinement under
27 RCW 9.94A.660(10), in which case the offender's conviction may only be
28 vacated under subsections (1) and (2) of this section.

29 (4) Once the court vacates a record of conviction under subsection
30 (1) of this section, the fact that the offender has been convicted of
31 the offense shall not be included in the offender's criminal history
32 for purposes of determining a sentence in any subsequent conviction,
33 and the offender shall be released from all penalties and disabilities
34 resulting from the offense. For all purposes, including responding to
35 questions on employment applications, an offender whose conviction has
36 been vacated may state that the offender has never been convicted of
37 that crime. Nothing in this section affects or prevents the use of an
38 offender's prior conviction in a later criminal prosecution.

1 **Sec. 3.** RCW 9.94A.737 and 2002 c 175 s 15 are each amended to read
2 as follows:

3 (1) If an offender violates any condition or requirement of
4 community custody, the department may transfer the offender to a more
5 restrictive confinement status to serve up to the remaining portion of
6 the sentence, less credit for any period actually spent in community
7 custody or in detention awaiting disposition of an alleged violation
8 and subject to the limitations of subsection (2) of this section.

9 (2)(a) For a sex offender sentenced to a term of community custody
10 under RCW 9.94A.670 who violates any condition of community custody,
11 the department may impose a sanction of up to sixty days' confinement
12 in a local correctional facility for each violation. If the department
13 imposes a sanction, the department shall submit within seventy-two
14 hours a report to the court and the prosecuting attorney outlining the
15 violation or violations and the sanctions imposed.

16 (b) For a sex offender sentenced to a term of community custody
17 under RCW 9.94A.710 who violates any condition of community custody
18 after having completed his or her maximum term of total confinement,
19 including time served on community custody in lieu of earned release,
20 the department may impose a sanction of up to sixty days in a local
21 correctional facility for each violation.

22 (c) For an offender sentenced to a term of community custody under
23 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
24 for a crime committed on or after July 1, 2000, who violates any
25 condition of community custody after having completed his or her
26 maximum term of total confinement, including time served on community
27 custody in lieu of earned release, the department may impose a sanction
28 of up to sixty days in total confinement for each violation. The
29 department may impose sanctions such as work release, home detention
30 with electronic monitoring, work crew, community restitution, inpatient
31 treatment, daily reporting, curfew, educational or counseling sessions,
32 supervision enhanced through electronic monitoring, or any other
33 sanctions available in the community.

34 (d) For an offender sentenced to a term of community placement
35 under RCW 9.94A.705 who violates any condition of community placement
36 after having completed his or her maximum term of total confinement,
37 including time served on community custody in lieu of earned release,
38 the department may impose a sanction of up to sixty days in total

1 confinement for each violation. The department may impose sanctions
2 such as work release, home detention with electronic monitoring, work
3 crew, community restitution, inpatient treatment, daily reporting,
4 curfew, educational or counseling sessions, supervision enhanced
5 through electronic monitoring, or any other sanctions available in the
6 community.

7 (e) For an offender sentenced to a term of community custody under
8 RCW 9.94A.660 who violates any condition of community custody, the
9 department may impose a sanction of up to sixty days' confinement in a
10 local correctional facility for each violation. If the department
11 imposes a sanction, the department shall submit within seventy-two
12 hours a report to the court and the prosecuting attorney outlining the
13 violation or violations and the sanctions imposed.

14 (3) If an offender is accused of violating any condition or
15 requirement of community custody, he or she is entitled to a hearing
16 before the department prior to the imposition of sanctions. The
17 hearing shall be considered as offender disciplinary proceedings and
18 shall not be subject to chapter 34.05 RCW. The department shall
19 develop hearing procedures and a structure of graduated sanctions.

20 (4) The hearing procedures required under subsection (3) of this
21 section shall be developed by rule and include the following:

22 (a) Hearing officers shall report through a chain of command
23 separate from that of community corrections officers;

24 (b) The department shall provide the offender with written notice
25 of the violation, the evidence relied upon, and the reasons the
26 particular sanction was imposed. The notice shall include a statement
27 of the rights specified in this subsection, and the offender's right to
28 file a personal restraint petition under court rules after the final
29 decision of the department;

30 (c) The hearing shall be held unless waived by the offender, and
31 shall be electronically recorded. For offenders not in total
32 confinement, the hearing shall be held within fifteen working days, but
33 not less than twenty-four hours, after notice of the violation. For
34 offenders in total confinement, the hearing shall be held within five
35 working days, but not less than twenty-four hours, after notice of the
36 violation;

37 (d) The offender shall have the right to: (i) Be present at the
38 hearing; (ii) have the assistance of a person qualified to assist the

1 offender in the hearing, appointed by the hearing officer if the
2 offender has a language or communications barrier; (iii) testify or
3 remain silent; (iv) call witnesses and present documentary evidence;
4 and (v) question witnesses who appear and testify; and

5 (e) The sanction shall take effect if affirmed by the hearing
6 officer. Within seven days after the hearing officer's decision, the
7 offender may appeal the decision to a panel of three reviewing officers
8 designated by the secretary or by the secretary's designee. The
9 sanction shall be reversed or modified if a majority of the panel finds
10 that the sanction was not reasonably related to any of the following:
11 (i) The crime of conviction; (ii) the violation committed; (iii) the
12 offender's risk of reoffending; or (iv) the safety of the community.

13 (5) For purposes of this section, no finding of a violation of
14 conditions may be based on unconfirmed or unconfirmable allegations.

15 **Sec. 4.** RCW 9.94A.501 and 2003 c 379 s 3 are each amended to read
16 as follows:

17 (1) When the department performs a risk assessment pursuant to RCW
18 9.94A.500, or to determine a person's conditions of supervision, the
19 risk assessment shall classify the offender into one of at least four
20 risk categories.

21 (2) The department shall supervise every offender sentenced to a
22 term of community custody, community placement, or community
23 supervision:

24 (a) Whose risk assessment places that offender in one of the two
25 highest risk categories; or

26 (b) Regardless of the offender's risk category if:

27 (i) The offender's current conviction is for:

28 (A) A sex offense;

29 (B) A violent offense;

30 (C) A crime against persons as defined in RCW 9.94A.411;

31 (D) A felony that is domestic violence as defined in RCW 10.99.020;

32 (E) A violation of RCW 9A.52.025 (residential burglary);

33 (F) A violation of, or an attempt, solicitation, or conspiracy to
34 violate, RCW 69.50.401 by manufacture or delivery or possession with
35 intent to deliver methamphetamine; or

36 (G) A violation of, or an attempt, solicitation, or conspiracy to
37 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

1 (ii) The offender has a prior conviction for:
2 (A) A sex offense;
3 (B) A violent offense;
4 (C) A crime against persons as defined in RCW 9.94A.411;
5 (D) A felony that is domestic violence as defined in RCW 10.99.020;
6 (E) A violation of RCW 9A.52.025 (residential burglary);
7 (F) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.401 by manufacture or delivery or possession with
9 intent to deliver methamphetamine; or

10 (G) A violation of, or an attempt, solicitation, or conspiracy to
11 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

12 (iii) The conditions of the offender's community custody, community
13 placement, or community supervision include chemical dependency
14 treatment, including conditions imposed pursuant to a sentence under
15 RCW 9.94A.660;

16 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
17 or

18 (v) The offender is subject to supervision pursuant to RCW
19 9.94A.745.

20 (3) The department is not authorized to, and may not, supervise any
21 offender sentenced to a term of community custody, community placement,
22 or community supervision unless the offender is one for whom
23 supervision is required under subsection (2) of this section.

24 (4) This section expires July 1, 2010.

25 NEW SECTION. **Sec. 5.** This act applies prospectively only and not
26 retroactively. It applies only to crimes committed on or after the
27 effective date of this act.

28 NEW SECTION. **Sec. 6.** This act takes effect October 1, 2005.

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