
HOUSE BILL 3252

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By Representatives O'Brien, Rodne, Santos, Strow, Green, Simpson, McDonald, Morrell, Ericks, Kilmer, Williams and Hasegawa

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1 AN ACT Relating to prohibiting offenders who enter Alford pleas
2 from receiving a special sex offender sentencing alternative;
3 reenacting and amending RCW 9.94A.670; and prescribing penalties.

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

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

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

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

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

16 (c) "Victim" means any person who has sustained emotional,
17 psychological, physical, or financial injury to person or property as
18 a result of the crime charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or guardian
2 is the perpetrator of the offense.

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

5 (a) The offender has been convicted of a sex offense other than a
6 violation of RCW 9A.44.050 or a sex offense that is also a serious
7 violent offense. If the conviction results from a guilty plea, the
8 offender must, as part of his or her plea of guilty, voluntarily and
9 affirmatively admit he or she committed all of the elements of the
10 crime to which the offender is pleading guilty. This alternative is
11 not available to offenders who plead guilty to the offense charged
12 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d
13 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

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

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

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

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

27 (3) If the court finds the offender is eligible for this
28 alternative, the court, on its own motion or the motion of the state or
29 the offender, may order an examination to determine whether the
30 offender is amenable to treatment.

31 (a) The report of the examination shall include at a minimum the
32 following:

33 (i) The offender's version of the facts and the official version of
34 the facts;

35 (ii) The offender's offense history;

36 (iii) An assessment of problems in addition to alleged deviant
37 behaviors;

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

1 (v) Other evaluation measures used.

2 The report shall set forth the sources of the examiner's
3 information.

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

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

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

11 (iii) Monitoring plans, including any requirements regarding living
12 conditions, lifestyle requirements, and monitoring by family members
13 and others;

14 (iv) Anticipated length of treatment; and

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

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

27 (4) After receipt of the reports, the court shall consider whether
28 the offender and the community will benefit from use of this
29 alternative, consider whether the alternative is too lenient in light
30 of the extent and circumstances of the offense, consider whether the
31 offender has victims in addition to the victim of the offense, consider
32 whether the offender is amenable to treatment, consider the risk the
33 offender would present to the community, to the victim, or to persons
34 of similar age and circumstances as the victim, and consider the
35 victim's opinion whether the offender should receive a treatment
36 disposition under this section. The court shall give great weight to
37 the victim's opinion whether the offender should receive a treatment
38 disposition under this section. If the sentence imposed is contrary to

1 the victim's opinion, the court shall enter written findings stating
2 its reasons for imposing the treatment disposition. The fact that the
3 offender admits to his or her offense does not, by itself, constitute
4 amenability to treatment. If the court determines that this
5 alternative is appropriate, the court shall then impose a sentence or,
6 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
7 standard sentence range. If the sentence imposed is less than eleven
8 years of confinement, the court may suspend the execution of the
9 sentence and impose the following conditions of suspension:

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

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

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

36 (d) As conditions of the suspended sentence, the court shall impose
37 specific prohibitions and affirmative conditions relating to the known

1 precursor activities or behaviors identified in the proposed treatment
2 plan under subsection (3)(b)(v) of this section or identified in an
3 annual review under subsection (7)(b) of this section.

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

6 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

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

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

1 (8) At least fourteen days prior to the treatment termination
2 hearing, notice of the hearing shall be given to the victim. The
3 victim shall be given the opportunity to make statements to the court
4 regarding the offender's supervision and treatment. Prior to the
5 treatment termination hearing, the treatment provider and community
6 corrections officer shall submit written reports to the court and
7 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)(a) If a violation of conditions other than a second violation
23 of the prohibitions or affirmative conditions relating to precursor
24 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
25 this section occurs during community custody, the department shall
26 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
27 the violation to the court and recommend revocation of the suspended
28 sentence as provided for in subsections (6) and (8) of this section.

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

35 (10) The court may revoke the suspended sentence at any time during
36 the period of community custody and order execution of the sentence if:
37 (a) The offender violates the conditions of the suspended sentence, or
38 (b) the court finds that the offender is failing to make satisfactory

1 progress in treatment. All confinement time served during the period
2 of community custody shall be credited to the offender if the suspended
3 sentence is revoked.

4 (11) The offender's sex offender treatment provider may not be the
5 same person who examined the offender under subsection (3) of this
6 section or any person who employs, is employed by, or shares profits
7 with the person who examined the offender under subsection (3) of this
8 section, unless the court has entered written findings that such
9 treatment is in the best interests of the victim and that successful
10 treatment of the offender would otherwise be impractical. Examinations
11 and treatment ordered pursuant to this subsection shall only be
12 conducted by certified sex offender treatment providers or certified
13 affiliate sex offender treatment providers under chapter 18.155 RCW
14 unless the court finds that:

15 (a) The offender has already moved to another state or plans to
16 move to another state for reasons other than circumventing the
17 certification requirements; or

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

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

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

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