
SENATE BILL 6321

State of Washington

59th Legislature

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By Senators Regala, Brandland, Stevens, Carrell, Kline, Keiser, Rockefeller, Berkey, Haugen, Fairley, Spanel, Pflug, Sheldon, Rasmussen, McAuliffe, Shin and Roach

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1 AN ACT Relating to eligibility for the special sex offender
2 sentencing alternative; reenacting and amending RCW 9.94A.670; and
3 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. In a plea agreement, the offender must enter a guilty
8 plea, which includes admitting to the crime and accepting personal
9 responsibility for his or her behavior;

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

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

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

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

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

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

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

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

31 (ii) The offender's offense history;

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

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

35 (v) Other evaluation measures used.

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

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

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

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

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

11 (iv) Anticipated length of treatment; and

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

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

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

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

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

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

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

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

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

3 (a) Crime-related prohibitions;

4 (b) Require the offender to devote time to a specific employment or
5 occupation;

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

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

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

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

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

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

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

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

36 (8) At least fourteen days prior to the treatment termination
37 hearing, notice of the hearing shall be given to the victim. The
38 victim shall be given the opportunity to make statements to the court

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

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

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

32 (10) The court may revoke the suspended sentence at any time during
33 the period of community custody and order execution of the sentence if:
34 (a) The offender violates the conditions of the suspended sentence, or
35 (b) the court finds that the offender is failing to make satisfactory
36 progress in treatment. All confinement time served during the period
37 of community custody shall be credited to the offender if the suspended
38 sentence is revoked.

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

12 (a) The offender has already moved to another state or plans to
13 move to another state for reasons other than circumventing the
14 certification requirements; or

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

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

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

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