
ENGROSSED SUBSTITUTE SENATE BILL 6409

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Doumit, McAuliffe, Regala, Rasmussen and Oke; by request of Attorney General)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to prohibiting offenders who enter Alford pleas or
2 Newton pleas from receiving special sex offender sentencing and
3 disposition alternatives; reenacting and amending RCW 9.94A.670 and
4 13.40.160; and prescribing penalties.

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

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

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

10 (a) "Alford plea" or "Newton plea" means a guilty plea in which an
11 offender refuses to admit the commission of a criminal act or protests
12 his or her innocence.

13 (b) "Sex offender treatment provider" or "treatment provider" means
14 a certified sex offender treatment provider or a certified affiliate
15 sex offender treatment provider as defined in RCW 18.155.020.

16 ((b)) (c) "Substantial bodily harm" means bodily injury that
17 involves a temporary but substantial disfigurement, or that causes a
18 temporary but substantial loss or impairment of the function of any

1 body part or organ, or that causes a fracture of any body part or
2 organ.

3 ~~((e))~~ (d) "Victim" means any person who has sustained emotional,
4 psychological, physical, or financial injury to person or property as
5 a result of the crime charged. "Victim" also means a parent or
6 guardian of a victim who is a minor child unless the parent or guardian
7 is the perpetrator of the offense.

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

10 (a) The offender has been convicted of a sex offense other than a
11 violation of RCW 9A.44.050 or a sex offense that is also a serious
12 violent offense. An offender pleading guilty must voluntarily admit to
13 the commission of all the elements of the crime of conviction. An
14 offender who enters an Alford plea or Newton plea on a sex offense
15 shall not be eligible for the special sex offender sentencing
16 alternative;

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

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

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

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

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

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

34 (a) The report of the examination shall include at a minimum the
35 following:

36 (i) The offender's version of the facts and the official version of
37 the facts;

38 (ii) The offender's offense history;

1 (iii) An assessment of problems in addition to alleged deviant
2 behaviors;

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

4 (v) Other evaluation measures used.

5 The report shall set forth the sources of the examiner's
6 information.

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

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

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

14 (iii) Monitoring plans, including any requirements regarding living
15 conditions, lifestyle requirements, and monitoring by family members
16 and others;

17 (iv) Anticipated length of treatment; and

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

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

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

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

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

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

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

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

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

8 (a) Crime-related prohibitions;

9 (b) Require the offender to devote time to a specific employment or
10 occupation;

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

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

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

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

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

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

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

31 (b) The court shall conduct a hearing on the offender's progress in
32 treatment at least once a year. At least fourteen days prior to the
33 hearing, notice of the hearing shall be given to the victim. The
34 victim shall be given the opportunity to make statements to the court
35 regarding the offender's supervision and treatment. At the hearing,
36 the court may modify conditions of community custody including, but not
37 limited to, crime-related prohibitions and affirmative conditions

1 relating to activities and behaviors identified as part of, or relating
2 to precursor activities and behaviors in, the offender's offense cycle
3 or revoke the suspended sentence.

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

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

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

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

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

19 (a) The offender has already moved to another state or plans to
20 move to another state for reasons other than circumventing the
21 certification requirements; or

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

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

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

30 **Sec. 2.** RCW 13.40.160 and 2004 c 120 s 4 and 2004 c 38 s 11 are
31 each reenacted and amended to read as follows:

32 (1) The standard range disposition for a juvenile adjudicated of an
33 offense is determined according to RCW 13.40.0357.

34 (a) When the court sentences an offender to a local sanction as
35 provided in RCW 13.40.0357 option A, the court shall impose a
36 determinate disposition within the standard ranges, except as provided

1 in subsection (2), (3), (4), (5), or (6) of this section. The
2 disposition may be comprised of one or more local sanctions.

3 (b) When the court sentences an offender to a standard range as
4 provided in RCW 13.40.0357 option A that includes a term of confinement
5 exceeding thirty days, commitment shall be to the department for the
6 standard range of confinement, except as provided in subsection (2),
7 (3), (4), (5), or (6) of this section.

8 (2) If the court concludes, and enters reasons for its conclusion,
9 that disposition within the standard range would effectuate a manifest
10 injustice the court shall impose a disposition outside the standard
11 range, as indicated in option D of RCW 13.40.0357. The court's finding
12 of manifest injustice shall be supported by clear and convincing
13 evidence.

14 A disposition outside the standard range shall be determinate and
15 shall be comprised of confinement or community supervision, or a
16 combination thereof. When a judge finds a manifest injustice and
17 imposes a sentence of confinement exceeding thirty days, the court
18 shall sentence the juvenile to a maximum term, and the provisions of
19 RCW 13.40.030(2) shall be used to determine the range. A disposition
20 outside the standard range is appealable under RCW 13.40.230 by the
21 state or the respondent. A disposition within the standard range is
22 not appealable under RCW 13.40.230.

23 (3) When a juvenile offender is found to have committed a sex
24 offense, other than a sex offense that is also a serious violent
25 offense as defined by RCW 9.94A.030, and has no history of a prior sex
26 offense, the court, on its own motion or the motion of the state or the
27 respondent, may order an examination to determine whether the
28 respondent is amenable to treatment.

29 The report of the examination shall include at a minimum the
30 following: The respondent's version of the facts and the official
31 version of the facts, the respondent's offense history, an assessment
32 of problems in addition to alleged deviant behaviors, the respondent's
33 social, educational, and employment situation, and other evaluation
34 measures used. The report shall set forth the sources of the
35 evaluator's information.

36 The examiner shall assess and report regarding the respondent's
37 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

3 (a)(i) Frequency and type of contact between the offender and
4 therapist;

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

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

10 (iv) Anticipated length of treatment; and

11 (v) Recommended crime-related prohibitions.

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

18 After receipt of reports of the examination, the court shall then
19 consider whether the offender and the community will benefit from use
20 of this special sex offender disposition alternative and consider the
21 victim's opinion whether the offender should receive a treatment
22 disposition under this section. An offender pleading guilty must
23 voluntarily admit to the commission of all the elements of the crime of
24 conviction. An offender who enters an Alford plea or Newton plea on a
25 sex offense shall not be eligible for the special sex offender
26 sentencing alternative. If the court otherwise determines that this
27 special sex offender disposition alternative is appropriate, then the
28 court shall impose a determinate disposition within the standard range
29 for the offense, or if the court concludes, and enters reasons for its
30 conclusions, that such disposition would cause a manifest injustice,
31 the court shall impose a disposition under option D, and the court may
32 suspend the execution of the disposition and place the offender on
33 community supervision for at least two years. As a condition of the
34 suspended disposition, the court may impose the conditions of community
35 supervision and other conditions, including up to thirty days of
36 confinement and requirements that the offender do any one or more of
37 the following:

- 1 (b)(i) Devote time to a specific education, employment, or
2 occupation;
- 3 (ii) Undergo available outpatient sex offender treatment for up to
4 two years, or inpatient sex offender treatment not to exceed the
5 standard range of confinement for that offense. A community mental
6 health center may not be used for such treatment unless it has an
7 appropriate program designed for sex offender treatment. The
8 respondent shall not change sex offender treatment providers or
9 treatment conditions without first notifying the prosecutor, the
10 probation counselor, and the court, and shall not change providers
11 without court approval after a hearing if the prosecutor or probation
12 counselor object to the change;
- 13 (iii) Remain within prescribed geographical boundaries and notify
14 the court or the probation counselor prior to any change in the
15 offender's address, educational program, or employment;
- 16 (iv) Report to the prosecutor and the probation counselor prior to
17 any change in a sex offender treatment provider. This change shall
18 have prior approval by the court;
- 19 (v) Report as directed to the court and a probation counselor;
- 20 (vi) Pay all court-ordered legal financial obligations, perform
21 community restitution, or any combination thereof;
- 22 (vii) Make restitution to the victim for the cost of any counseling
23 reasonably related to the offense;
- 24 (viii) Comply with the conditions of any court-ordered probation
25 bond; or
- 26 (ix) The court shall order that the offender shall not attend the
27 public or approved private elementary, middle, or high school attended
28 by the victim or the victim's siblings. The parents or legal guardians
29 of the offender are responsible for transportation or other costs
30 associated with the offender's change of school that would otherwise be
31 paid by the school district. The court shall send notice of the
32 disposition and restriction on attending the same school as the victim
33 or victim's siblings to the public or approved private school the
34 juvenile will attend, if known, or if unknown, to the approved private
35 schools and the public school district board of directors of the
36 district in which the juvenile resides or intends to reside. This
37 notice must be sent at the earliest possible date but not later than
38 ten calendar days after entry of the disposition.

1 The sex offender treatment provider shall submit quarterly reports
2 on the respondent's progress in treatment to the court and the parties.
3 The reports shall reference the treatment plan and include at a minimum
4 the following: Dates of attendance, respondent's compliance with
5 requirements, treatment activities, the respondent's relative progress
6 in treatment, and any other material specified by the court at the time
7 of the disposition.

8 At the time of the disposition, the court may set treatment review
9 hearings as the court considers appropriate.

10 Except as provided in this subsection (3), after July 1, 1991,
11 examinations and treatment ordered pursuant to this subsection shall
12 only be conducted by certified sex offender treatment providers or
13 certified affiliate sex offender treatment providers under chapter
14 18.155 RCW. A sex offender therapist who examines or treats a juvenile
15 sex offender pursuant to this subsection does not have to be certified
16 by the department of health pursuant to chapter 18.155 RCW if the court
17 finds that: (A) The offender has already moved to another state or
18 plans to move to another state for reasons other than circumventing the
19 certification requirements; (B) no certified sex offender treatment
20 providers or certified affiliate sex offender treatment providers are
21 available for treatment within a reasonable geographical distance of
22 the offender's home; and (C) the evaluation and treatment plan comply
23 with this subsection (3) and the rules adopted by the department of
24 health.

25 If the offender violates any condition of the disposition or the
26 court finds that the respondent is failing to make satisfactory
27 progress in treatment, the court may revoke the suspension and order
28 execution of the disposition or the court may impose a penalty of up to
29 thirty days' confinement for violating conditions of the disposition.
30 The court may order both execution of the disposition and up to thirty
31 days' confinement for the violation of the conditions of the
32 disposition. The court shall give credit for any confinement time
33 previously served if that confinement was for the offense for which the
34 suspension is being revoked.

35 For purposes of this section, "victim" means any person who has
36 sustained emotional, psychological, physical, or financial injury to
37 person or property as a direct result of the crime charged. "Victim"

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

3 A disposition entered under this subsection (3) is not appealable
4 under RCW 13.40.230.

5 (4) If the juvenile offender is subject to a standard range
6 disposition of local sanctions or 15 to 36 weeks of confinement and has
7 not committed an A- or B+ offense, the court may impose the disposition
8 alternative under RCW 13.40.165.

9 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
10 confinement, the court may impose the disposition alternative under RCW
11 13.40.167.

12 (6) When the offender is subject to a standard range commitment of
13 15 to 36 weeks and is ineligible for a suspended disposition
14 alternative, a manifest injustice disposition below the standard range,
15 special sex offender disposition alternative, chemical dependency
16 disposition alternative, or mental health disposition alternative, the
17 court in a county with a pilot program under RCW 13.40.169 may impose
18 the disposition alternative under RCW 13.40.169.

19 (7) RCW 13.40.193 shall govern the disposition of any juvenile
20 adjudicated of possessing a firearm in violation of RCW
21 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
22 that the juvenile was armed with a firearm.

23 (8) Whenever a juvenile offender is entitled to credit for time
24 spent in detention prior to a dispositional order, the dispositional
25 order shall specifically state the number of days of credit for time
26 served.

27 (9) Except as provided under subsection (3), (4), (5), or (6) of
28 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the
29 court shall not suspend or defer the imposition or the execution of the
30 disposition.

31 (10) In no case shall the term of confinement imposed by the court
32 at disposition exceed that to which an adult could be subjected for the
33 same offense.

--- END ---