
SUBSTITUTE SENATE BILL 6409

State of Washington

59th Legislature

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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 sex offender sentencing and disposition
2 alternatives; reenacting and amending RCW 9.94A.670 and 13.40.160; 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) "Alford plea" means a guilty plea in which an offender refuses
10 to admit the commission of a criminal act or protests his or her
11 innocence.

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

15 ((+b)) (c) "Substantial bodily harm" means bodily injury that
16 involves a temporary but substantial disfigurement, or that causes a
17 temporary but substantial loss or impairment of the function of any
18 body part or organ, or that causes a fracture of any body part or
19 organ.

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

6 (2) An offender is eligible for the special sex offender sentencing
7 alternative if:

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

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.

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

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

30 (a) When the court sentences an offender to a local sanction as
31 provided in RCW 13.40.0357 option A, the court shall impose a
32 determinate disposition within the standard ranges, except as provided
33 in subsection (2), (3), (4), (5), or (6) of this section. The
34 disposition may be comprised of one or more local sanctions.

35 (b) When the court sentences an offender to a standard range as
36 provided in RCW 13.40.0357 option A that includes a term of confinement

1 exceeding thirty days, commitment shall be to the department for the
2 standard range of confinement, except as provided in subsection (2),
3 (3), (4), (5), or (6) of this section.

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

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

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

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

32 The examiner shall assess and report regarding the respondent's
33 amenability to treatment and relative risk to the community. A
34 proposed treatment plan shall be provided and shall include, at a
35 minimum:

36 (a)(i) Frequency and type of contact between the offender and
37 therapist;

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

3 (iii) Monitoring plans, including any requirements regarding living
4 conditions, lifestyle requirements, and monitoring by family members,
5 legal guardians, or others;

6 (iv) Anticipated length of treatment; and

7 (v) Recommended crime-related prohibitions.

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

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

34 (b)(i) Devote time to a specific education, employment, or
35 occupation;

36 (ii) Undergo available outpatient sex offender treatment for up to
37 two years, or inpatient sex offender treatment not to exceed the
38 standard range of confinement for that offense. A community mental

1 health center may not be used for such treatment unless it has an
2 appropriate program designed for sex offender treatment. The
3 respondent shall not change sex offender treatment providers or
4 treatment conditions without first notifying the prosecutor, the
5 probation counselor, and the court, and shall not change providers
6 without court approval after a hearing if the prosecutor or probation
7 counselor object to the change;

8 (iii) Remain within prescribed geographical boundaries and notify
9 the court or the probation counselor prior to any change in the
10 offender's address, educational program, or employment;

11 (iv) Report to the prosecutor and the probation counselor prior to
12 any change in a sex offender treatment provider. This change shall
13 have prior approval by the court;

14 (v) Report as directed to the court and a probation counselor;

15 (vi) Pay all court-ordered legal financial obligations, perform
16 community restitution, or any combination thereof;

17 (vii) Make restitution to the victim for the cost of any counseling
18 reasonably related to the offense;

19 (viii) Comply with the conditions of any court-ordered probation
20 bond; or

21 (ix) The court shall order that the offender shall not attend the
22 public or approved private elementary, middle, or high school attended
23 by the victim or the victim's siblings. The parents or legal guardians
24 of the offender are responsible for transportation or other costs
25 associated with the offender's change of school that would otherwise be
26 paid by the school district. The court shall send notice of the
27 disposition and restriction on attending the same school as the victim
28 or victim's siblings to the public or approved private school the
29 juvenile will attend, if known, or if unknown, to the approved private
30 schools and the public school district board of directors of the
31 district in which the juvenile resides or intends to reside. This
32 notice must be sent at the earliest possible date but not later than
33 ten calendar days after entry of the disposition.

34 The sex offender treatment provider shall submit quarterly reports
35 on the respondent's progress in treatment to the court and the parties.
36 The reports shall reference the treatment plan and include at a minimum
37 the following: Dates of attendance, respondent's compliance with

1 requirements, treatment activities, the respondent's relative progress
2 in treatment, and any other material specified by the court at the time
3 of the disposition.

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

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

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

31 For purposes of this section, "victim" means any person who has
32 sustained emotional, psychological, physical, or financial injury to
33 person or property as a direct result of the crime charged. "Victim"
34 may also include a known parent or guardian of a victim who is a minor
35 child unless the parent or guardian is the perpetrator of the offense.

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

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

5 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
6 confinement, the court may impose the disposition alternative under RCW
7 13.40.167.

8 (6) When the offender is subject to a standard range commitment of
9 15 to 36 weeks and is ineligible for a suspended disposition
10 alternative, a manifest injustice disposition below the standard range,
11 special sex offender disposition alternative, chemical dependency
12 disposition alternative, or mental health disposition alternative, the
13 court in a county with a pilot program under RCW 13.40.169 may impose
14 the disposition alternative under RCW 13.40.169.

15 (7) RCW 13.40.193 shall govern the disposition of any juvenile
16 adjudicated of possessing a firearm in violation of RCW
17 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
18 that the juvenile was armed with a firearm.

19 (8) Whenever a juvenile offender is entitled to credit for time
20 spent in detention prior to a dispositional order, the dispositional
21 order shall specifically state the number of days of credit for time
22 served.

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

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

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