
SUBSTITUTE SENATE BILL 6864

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline and Johnson)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to offenders receiving the drug offender sentencing
2 alternative; and amending RCW 9.94A.728 and 9.94A.660.

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

4 **Sec. 1.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read
5 as follows:

6 No person serving a sentence imposed pursuant to this chapter and
7 committed to the custody of the department shall leave the confines of
8 the correctional facility or be released prior to the expiration of the
9 sentence except as follows:

10 (1) Except as otherwise provided for in subsection (2) of this
11 section, the term of the sentence of an offender committed to a
12 correctional facility operated by the department may be reduced by
13 earned release time in accordance with procedures that shall be
14 developed and promulgated by the correctional agency having
15 jurisdiction in which the offender is confined. The earned release
16 time shall be for good behavior and good performance, as determined by
17 the correctional agency having jurisdiction. The correctional agency
18 shall not credit the offender with earned release credits in advance of
19 the offender actually earning the credits. Any program established

1 pursuant to this section shall allow an offender to earn early release
2 credits for presentence incarceration. If an offender is transferred
3 from a county jail to the department, the administrator of a county
4 jail facility shall certify to the department the amount of time spent
5 in custody at the facility and the amount of earned release time. An
6 offender who has been convicted of a felony committed after July 23,
7 1995, that involves any applicable deadly weapon enhancements under RCW
8 9.94A.533 (3) or (4), or both, shall not receive any good time credits
9 or earned release time for that portion of his or her sentence that
10 results from any deadly weapon enhancements.

11 (a) In the case of an offender convicted of a serious violent
12 offense, or a sex offense that is a class A felony, committed on or
13 after July 1, 1990, and before July 1, 2003, the aggregate earned
14 release time may not exceed fifteen percent of the sentence. In the
15 case of an offender convicted of a serious violent offense, or a sex
16 offense that is a class A felony, committed on or after July 1, 2003,
17 the aggregate earned release time may not exceed ten percent of the
18 sentence.

19 (b)(i) In the case of an offender who qualifies under (b)(ii) of
20 this subsection, the aggregate earned release time may not exceed fifty
21 percent of the sentence.

22 (ii) An offender is qualified to earn up to fifty percent of
23 aggregate earned release time under this subsection (1)(b) if he or
24 she:

25 (A) Is classified in one of the two lowest risk categories under
26 (b)(iii) of this subsection;

27 (B) Is not confined pursuant to a sentence for:

28 (I) A sex offense;

29 (II) A violent offense;

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

31 (IV) A felony that is domestic violence as defined in RCW
32 10.99.020;

33 (V) A violation of RCW 9A.52.025 (residential burglary);

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

37 (VII) A violation of, or an attempt, solicitation, or conspiracy to

1 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
2 and
3 (C) Has no prior conviction for:
4 (I) A sex offense;
5 (II) A violent offense;
6 (III) A crime against persons as defined in RCW 9.94A.411;
7 (IV) A felony that is domestic violence as defined in RCW
8 10.99.020;
9 (V) A violation of RCW 9A.52.025 (residential burglary);
10 (VI) A violation of, or an attempt, solicitation, or conspiracy to
11 violate, RCW 69.50.401 by manufacture or delivery or possession with
12 intent to deliver methamphetamine; or
13 (VII) A violation of, or an attempt, solicitation, or conspiracy to
14 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).
15 (iii) For purposes of determining an offender's eligibility under
16 this subsection (1)(b), the department shall perform a risk assessment
17 of every offender committed to a correctional facility operated by the
18 department who has no current or prior conviction for a sex offense, a
19 violent offense, a crime against persons as defined in RCW 9.94A.411,
20 a felony that is domestic violence as defined in RCW 10.99.020, a
21 violation of RCW 9A.52.025 (residential burglary), a violation of, or
22 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
23 manufacture or delivery or possession with intent to deliver
24 methamphetamine, or a violation of, or an attempt, solicitation, or
25 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
26 substance to a minor). The department must classify each assessed
27 offender in one of four risk categories between highest and lowest
28 risk.
29 (iv) The department shall recalculate the earned release time and
30 reschedule the expected release dates for each qualified offender under
31 this subsection (1)(b).
32 (v) This subsection (1)(b) applies retroactively to eligible
33 offenders serving terms of total confinement in a state correctional
34 facility as of July 1, 2003.
35 (vi) This subsection (1)(b) does not apply to offenders convicted
36 after July 1, 2010.
37 (c) In no case shall an offender sentenced to the drug offender

1 sentencing alternative, RCW 9.94A.660, aggregate earned early release
2 time exceeding one-third of the period of total confinement.

3 (d) In no other case shall the aggregate earned release time exceed
4 one-third of the total sentence;

5 (2)(a) A person convicted of a sex offense or an offense
6 categorized as a serious violent offense, assault in the second degree,
7 vehicular homicide, vehicular assault, assault of a child in the second
8 degree, any crime against persons where it is determined in accordance
9 with RCW 9.94A.602 that the offender or an accomplice was armed with a
10 deadly weapon at the time of commission, or any felony offense under
11 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
12 eligible, in accordance with a program developed by the department, for
13 transfer to community custody status in lieu of earned release time
14 pursuant to subsection (1) of this section;

15 (b) A person convicted of a sex offense, a violent offense, any
16 crime against persons under RCW 9.94A.411(2), or a felony offense under
17 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
18 become eligible, in accordance with a program developed by the
19 department, for transfer to community custody status in lieu of earned
20 release time pursuant to subsection (1) of this section;

21 (c) The department shall, as a part of its program for release to
22 the community in lieu of earned release, require the offender to
23 propose a release plan that includes an approved residence and living
24 arrangement. All offenders with community placement or community
25 custody terms eligible for release to community custody status in lieu
26 of earned release shall provide an approved residence and living
27 arrangement prior to release to the community;

28 (d) The department may deny transfer to community custody status in
29 lieu of earned release time pursuant to subsection (1) of this section
30 if the department determines an offender's release plan, including
31 proposed residence location and living arrangements, may violate the
32 conditions of the sentence or conditions of supervision, place the
33 offender at risk to violate the conditions of the sentence, place the
34 offender at risk to reoffend, or present a risk to victim safety or
35 community safety. The department's authority under this section is
36 independent of any court-ordered condition of sentence or statutory
37 provision regarding conditions for community custody or community
38 placement;

1 (e) An offender serving a term of confinement imposed under RCW
2 9.94A.670(4)(a) is not eligible for earned release credits under this
3 section;

4 (3) An offender may leave a correctional facility pursuant to an
5 authorized furlough or leave of absence. In addition, offenders may
6 leave a correctional facility when in the custody of a corrections
7 officer or officers;

8 (4)(a) The secretary may authorize an extraordinary medical
9 placement for an offender when all of the following conditions exist:

10 (i) The offender has a medical condition that is serious enough to
11 require costly care or treatment;

12 (ii) The offender poses a low risk to the community because he or
13 she is physically incapacitated due to age or the medical condition;
14 and

15 (iii) Granting the extraordinary medical placement will result in
16 a cost savings to the state.

17 (b) An offender sentenced to death or to life imprisonment without
18 the possibility of release or parole is not eligible for an
19 extraordinary medical placement.

20 (c) The secretary shall require electronic monitoring for all
21 offenders in extraordinary medical placement unless the electronic
22 monitoring equipment interferes with the function of the offender's
23 medical equipment or results in the loss of funding for the offender's
24 medical care. The secretary shall specify who shall provide the
25 monitoring services and the terms under which the monitoring shall be
26 performed.

27 (d) The secretary may revoke an extraordinary medical placement
28 under this subsection at any time;

29 (5) The governor, upon recommendation from the clemency and pardons
30 board, may grant an extraordinary release for reasons of serious health
31 problems, senility, advanced age, extraordinary meritorious acts, or
32 other extraordinary circumstances;

33 (6) No more than the final six months of the sentence may be served
34 in partial confinement designed to aid the offender in finding work and
35 reestablishing himself or herself in the community;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section; and

3 (9) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870.

6 Notwithstanding any other provisions of this section, an offender
7 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
8 mandatory minimum sentence of total confinement shall not be released
9 from total confinement before the completion of the listed mandatory
10 minimum sentence for that felony crime of conviction unless allowed
11 under RCW 9.94A.540, however persistent offenders are not eligible for
12 extraordinary medical placement.

13 **Sec. 2.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read
14 as follows:

15 (1) An offender is eligible for the special drug offender
16 sentencing alternative if:

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

20 (b) The offender has no current or prior convictions for a sex
21 offense at any time or violent offense within ten years before
22 conviction of the current offense, in this state, another state, or the
23 United States;

24 (c) For a violation of the Uniform Controlled Substances Act under
25 chapter 69.50 RCW or a criminal solicitation to commit such a violation
26 under chapter 9A.28 RCW, the offense involved only a small quantity of
27 the particular controlled substance as determined by the judge upon
28 consideration of such factors as the weight, purity, packaging, sale
29 price, and street value of the controlled substance;

30 (d) The offender has not been found by the United States attorney
31 general to be subject to a deportation detainer or order and does not
32 become subject to a deportation order during the period of the
33 sentence;

34 (e) The standard sentence range for the current offense is greater
35 than one year; and

36 (f) The offender has not received a drug offender sentencing

1 alternative more than once in the prior ten years before the current
2 offense.

3 (2) A motion for a sentence under this section may be made by the
4 court, the offender, or the state. If the sentencing court determines
5 that the offender is eligible for this alternative, the court may order
6 an examination of the offender. The examination shall, at a minimum,
7 address the following issues:

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

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

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

15 (d) Whether the offender and the community will benefit from the
16 use of the alternative.

17 (3) The examination report must contain:

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

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

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

24 (ii) The recommended frequency and length of treatment, including
25 both residential chemical dependency treatment and treatment in the
26 community;

27 (iii) A proposed monitoring plan, including any requirements
28 regarding living conditions, lifestyle requirements, and monitoring by
29 family members and others; and

30 (iv) Recommended crime-related prohibitions and affirmative
31 conditions.

32 (4) After receipt of the examination report, if the court
33 determines that a sentence under this section is appropriate, the court
34 shall waive imposition of a sentence within the standard sentence range
35 and impose a sentence consisting of either a prison-based alternative
36 under subsection (5) of this section or a residential chemical
37 dependency treatment-based alternative under subsection (6) of this

1 section. The residential chemical dependency treatment-based
2 alternative is only available if the midpoint of the standard range is
3 twenty-four months or less.

4 (5) The prison-based alternative shall include:

5 (a) A period of total confinement in a state facility for one-half
6 of the midpoint of the standard sentence range or twelve months,
7 whichever is greater. During incarceration in the state facility,
8 offenders sentenced under this subsection shall undergo a comprehensive
9 substance abuse assessment and receive, within available resources,
10 treatment services appropriate for the offender. The treatment
11 services shall be designed by the division of alcohol and substance
12 abuse of the department of social and health services, in cooperation
13 with the department of corrections;

14 (b) The remainder of the midpoint of the standard range as a term
15 of community custody which must include appropriate substance abuse
16 treatment in a program that has been approved by the division of
17 alcohol and substance abuse of the department of social and health
18 services. If the department finds that conditions have been willfully
19 violated, the offender may be reclassified to serve the remaining
20 balance of the original sentence. An offender who fails to complete
21 the program or who is administratively terminated from the program
22 shall be reclassified to serve the unexpired term of his or her
23 sentence as ordered by the sentencing court;

24 (c) Crime-related prohibitions including a condition not to use
25 illegal controlled substances;

26 (d) A requirement to submit to urinalysis or other testing to
27 monitor that status; and

28 (e) A term of community custody pursuant to RCW 9.94A.715 to be
29 imposed upon failure to complete or administrative termination from the
30 special drug offender sentencing alternative program.

31 (6) The residential chemical dependency treatment-based alternative
32 shall include:

33 (a) A term of community custody equal to one-half of the midpoint
34 of the standard sentence range or two years, whichever is greater,
35 conditioned on the offender entering and remaining in residential
36 chemical dependency treatment certified under chapter 70.96A RCW for a
37 period set by the court between three and six months. If the court
38 imposes a term of community custody, the department shall, within

1 available resources, make chemical dependency assessment and treatment
2 services available to the offender during the term of community
3 custody. The court shall impose, as conditions of community custody,
4 treatment and other conditions as proposed in the plan under subsection
5 (3)(b) of this section. The department may impose conditions and
6 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
7 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
8 during the period of residential chemical dependency treatment, and
9 schedule a treatment termination hearing for three months before the
10 expiration of the term of community custody;

11 (b) Before the progress hearing and treatment termination hearing,
12 the treatment provider and the department shall submit written reports
13 to the court and parties regarding the offender's compliance with
14 treatment and monitoring requirements, and recommendations regarding
15 termination from treatment. At the hearing, the court may:

16 (i) Authorize the department to terminate the offender's community
17 custody status on the expiration date determined under (a) of this
18 subsection; or

19 (ii) Continue the hearing to a date before the expiration date of
20 community custody, with or without modifying the conditions of
21 community custody; or

22 (iii) Impose a term of total confinement equal to one-half the
23 midpoint of the standard sentence range, followed by a term of
24 community custody under RCW 9.94A.715;

25 (c) If the court imposes a term of total confinement under (b)(iii)
26 of this subsection, the department shall, within available resources,
27 make chemical dependency assessment and treatment services available to
28 the offender during the terms of total confinement and community
29 custody.

30 (7) If the court imposes a sentence under this section, the court
31 may prohibit the offender from using alcohol or controlled substances
32 and may require that the monitoring for controlled substances be
33 conducted by the department or by a treatment alternatives to street
34 crime program or a comparable court or agency-referred program. The
35 offender may be required to pay thirty dollars per month while on
36 community custody to offset the cost of monitoring. In addition, the
37 court may impose any of the following conditions:

38 (a) Devote time to a specific employment or training;

1 (b) Remain within prescribed geographical boundaries and notify the
2 court or the community corrections officer before any change in the
3 offender's address or employment;

4 (c) Report as directed to a community corrections officer;

5 (d) Pay all court-ordered legal financial obligations;

6 (e) Perform community restitution work;

7 (f) Stay out of areas designated by the sentencing court;

8 (g) Such other conditions as the court may require such as
9 affirmative conditions.

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

14 (b) If the offender is brought back to court, the court may modify
15 the terms of the community custody or impose sanctions under (c) of
16 this subsection.

17 (c) 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 or if the offender is failing
21 to make satisfactory progress in treatment.

22 (d) An offender ordered to serve a term of total confinement under
23 (c) of this subsection shall receive credit for any time previously
24 served under this section.

25 (9) If an offender sentenced to the prison-based alternative under
26 subsection (5) of this section is found by the United States attorney
27 general to be subject to a deportation order, a hearing shall be held
28 by the department unless waived by the offender, and, if the department
29 finds that the offender is subject to a valid deportation order, the
30 department may administratively terminate the offender from the program
31 and reclassify the offender to serve the remaining balance of the
32 original sentence.

33 (10) An offender sentenced under this section shall be subject to
34 all rules relating to earned release time with respect to any period
35 served in total confinement.

36 (11) Costs of examinations and preparing treatment plans under
37 subsections (2) and (3) of this section may be paid, at the option of

1 the county, from funds provided to the county from the criminal justice
2 treatment account under RCW 70.96A.350.

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