
SECOND SUBSTITUTE SENATE BILL 6211

State of Washington

66th Legislature

2020 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Padden, Nguyen, Das, and Hasegawa)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to drug offender sentencing; amending RCW
2 9.94A.662; reenacting and amending RCW 9.94A.660 and 9.94A.664; and
3 providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.660 and 2019 c 325 s 5002 and 2019 c 263 s 502
6 are each reenacted and amended to read as follows:

7 (1) An offender is eligible for the special drug offender
8 sentencing alternative if:

9 (a) The offender is convicted of a felony that is not a violent
10 offense (~~(or sex offense)~~) and the violation does not involve a
11 sentence enhancement under RCW 9.94A.533 (3) (~~(or)~~), (4), or (13);

12 (b) The offender is convicted of a felony that is not a felony
13 driving while under the influence of intoxicating liquor or any drug
14 under RCW 46.61.502(6) or felony physical control of a vehicle while
15 under the influence of intoxicating liquor or any drug under RCW
16 46.61.504(6);

17 (c) The offender has no current or prior convictions for a sex
18 offense (~~(at any time or)~~) in this state, another state, or the
19 United States for which the offender is currently or may be required
20 to register pursuant to RCW 9A.44.130;

1 (d) The offender has no prior convictions in this state, another
2 state, or the United States for:

3 (i) Robbery in the second degree that did not involve the use of
4 a firearm and was not reduced from robbery in the first degree within
5 seven years before conviction of the current offense; or

6 (ii) Any other violent offense within ten years before conviction
7 of the current offense (~~, in this state, another state, or the United~~
8 States));

9 ~~((d))~~ (e) For a violation of the Uniform Controlled Substances
10 Act under chapter 69.50 RCW or a criminal solicitation to commit such
11 a violation under chapter 9A.28 RCW, the offense involved only a
12 small quantity of the particular controlled substance as determined
13 by the judge upon consideration of such factors as the weight,
14 purity, packaging, sale price, and street value of the controlled
15 substance;

16 ~~((e))~~ (f) The offender has not been found by the United States
17 attorney general to be subject to a deportation detainer or order and
18 does not become subject to a deportation order during the period of
19 the sentence; and

20 ~~((f) The end of the standard sentence range for the current~~
21 ~~offense is greater than one year; and))~~

22 (g) The offender has not received a drug offender sentencing
23 alternative more than once in the prior ten years before the current
24 offense.

25 (2) A motion for a special drug offender sentencing alternative
26 may be made by the court, the offender, or the state.

27 (3) If the sentencing court determines that the offender is
28 eligible for an alternative sentence under this section and that the
29 alternative sentence is appropriate, the court shall waive imposition
30 of a sentence within the standard sentence range and impose a
31 sentence consisting of either a prison-based alternative under RCW
32 9.94A.662 or a residential substance use disorder treatment-based
33 alternative under RCW 9.94A.664. The residential substance use
34 disorder treatment-based alternative is only available if the
35 midpoint of the standard range is ~~((twenty-four))~~ twenty-six months
36 or less.

37 (4) (a) To assist the court in making its determination, the court
38 may order the department to complete either or both a risk assessment
39 report and a substance use disorder screening report as provided in
40 RCW 9.94A.500.

1 (b) To assist the court in making its determination in domestic
2 violence cases, the court shall order the department to complete a
3 presentence investigation and a chemical dependency screening report
4 as provided in RCW 9.94A.500, unless otherwise specifically waived by
5 the court.

6 (5) ~~((a))~~ If the court is considering imposing a sentence under
7 the residential substance use disorder treatment-based alternative,
8 the court may order an examination of the offender by the department.
9 The examination must be performed by an agency certified by the
10 department of health to provide substance use disorder services and
11 shall, at a minimum, address the following issues:

12 ~~((i))~~ (a) Whether the offender suffers from ((drug addiction))
13 a substance use disorder;

14 ~~((ii))~~ (b) Whether the ((addiction)) substance use disorder is
15 such that there is a probability that criminal behavior will occur in
16 the future;

17 ~~((iii))~~ (c) Whether effective treatment for the offender's
18 ((addiction)) substance use disorder is available from a provider
19 that has been licensed or certified by the department of health, and
20 where applicable, whether effective domestic violence perpetrator
21 treatment is available from a state-certified domestic violence
22 treatment provider pursuant to chapter 26.50 RCW; and

23 ~~((iv))~~ (d) Whether the offender and the community will benefit
24 from the use of the alternative.

25 ~~((b) The examination report must contain:~~

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

29 ~~(ii) Recommended crime-related prohibitions and affirmative~~
30 ~~conditions.))~~

31 (6) When a court imposes a sentence of community custody under
32 this section:

33 (a) The court may impose conditions as provided in RCW 9.94A.703
34 and may impose other affirmative conditions as the court considers
35 appropriate. In addition, an offender may be required to pay thirty
36 dollars per month while on community custody to offset the cost of
37 monitoring for alcohol or controlled substances, or in cases of
38 domestic violence for monitoring with global positioning system
39 technology for compliance with a no-contact order.

1 (b) The department may impose conditions and sanctions as
2 authorized in RCW 9.94A.704 and 9.94A.737.

3 (7) (a) The court may bring any offender sentenced under this
4 section back into court at any time on its own initiative to evaluate
5 the offender's progress in treatment or to determine if any
6 violations of the conditions of the sentence have occurred.

7 (b) If the offender is brought back to court, the court may
8 modify the conditions of the community custody or impose sanctions
9 under (c) of this subsection.

10 (c) The court may order the offender to serve a term of total
11 confinement within the standard range of the offender's current
12 offense at any time during the period of community custody if the
13 offender violates the conditions or requirements of the sentence or
14 if the offender is failing to make satisfactory progress in
15 treatment.

16 (d) An offender ordered to serve a term of total confinement
17 under (c) of this subsection shall receive credit for ~~((any))~~ time
18 previously served in total or partial confinement and inpatient
19 treatment under this section, and shall receive fifty percent credit
20 for time previously served in community custody under this section.

21 (8) In serving a term of community custody imposed upon failure
22 to complete, or administrative termination from, the special drug
23 offender sentencing alternative program, the offender shall receive
24 no credit for time served in community custody prior to termination
25 of the offender's participation in the program.

26 (9) An offender sentenced under this section shall be subject to
27 all rules relating to earned release time with respect to any period
28 served in total confinement.

29 (10) Costs of examinations and preparing ~~((treatment))~~ the
30 recommended service delivery plans under a special drug offender
31 sentencing alternative may be paid, at the option of the county, from
32 funds provided to the county from the criminal justice treatment
33 account under RCW 71.24.580.

34 (11) Every five years, the department shall submit a report to
35 the governor and the appropriate committees of the legislature
36 analyzing the effectiveness of the drug offender sentencing
37 alternative in reducing recidivism among various offender
38 populations. The first report is due November 1, 2022, and every five
39 years thereafter. The department shall coordinate with the Washington

1 state institute for public policy and the caseload forecast council
2 in guiding its data tracking efforts and preparing the report.

3 **Sec. 2.** RCW 9.94A.662 and 2019 c 263 s 503 are each amended to
4 read as follows:

5 (1) The court may only order a prison-based special drug offender
6 sentencing alternative if the high end of the standard sentence range
7 for the current offense is greater than one year.

8 (2) A sentence for a prison-based special drug offender
9 sentencing alternative shall include:

10 (a) A period of total confinement in a state facility for one-
11 half the midpoint of the standard sentence range or twelve months,
12 whichever is greater;

13 (b) One-half the midpoint of the standard sentence range as a
14 term of community custody, which must include appropriate substance
15 ~~((abuse))~~ use disorder treatment in a program that has been approved
16 by the ~~((division of alcohol and substance abuse of the))~~ department
17 of ~~((social and))~~ health ~~((services))~~, and for co-occurring drug and
18 domestic violence cases, must also include an appropriate domestic
19 violence treatment program by a state-certified domestic violence
20 treatment provider pursuant to chapter 26.50 RCW;

21 (c) Crime-related prohibitions, including a condition not to use
22 illegal controlled substances;

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

25 (e) A term of community custody pursuant to RCW 9.94A.701 to be
26 imposed upon the failure to complete or administrative termination
27 from the special drug offender sentencing alternative program.

28 ~~((+2))~~ (3)(a) During incarceration in the state facility,
29 offenders sentenced under this section shall undergo a comprehensive
30 substance ~~((abuse))~~ use disorder assessment and receive, within
31 available resources, treatment services appropriate for the offender.
32 The substance ~~((abuse))~~ use disorder treatment services shall be
33 ~~((designed))~~ licensed by the ~~((division of alcohol and substance~~
34 ~~abuse of the))~~ department of ~~((social and))~~ health ~~((services, in~~
35 ~~cooperation with the department of corrections))~~.

36 (b) When applicable for cases involving domestic violence,
37 domestic violence treatment must be provided by a state-certified
38 domestic violence treatment provider pursuant to chapter 26.50 RCW
39 during the term of community custody.

1 ~~((3))~~ (4) If the department finds that conditions of community
2 custody have been willfully violated, the offender may be
3 reclassified to serve the remaining balance of the original sentence.
4 An offender who fails to complete the program or who is
5 administratively terminated from the program shall be reclassified to
6 serve the unexpired term of his or her sentence as ordered by the
7 sentencing court.

8 ~~((4))~~ (5) If an offender sentenced to the prison-based
9 alternative under this section is found by the United States attorney
10 general to be subject to a deportation order, a hearing shall be held
11 by the department unless waived by the offender, and, if the
12 department finds that the offender is subject to a valid deportation
13 order, the department may administratively terminate the offender
14 from the program and reclassify the offender to serve the remaining
15 balance of the original sentence.

16 **Sec. 3.** RCW 9.94A.664 and 2019 c 325 s 5003 and 2019 c 263 s 504
17 are each reenacted and amended to read as follows:

18 (1) (a) A sentence for a residential substance use disorder
19 treatment-based alternative shall include a term of community custody
20 equal to one-half the midpoint of the standard sentence range or two
21 years, whichever is greater, conditioned on the offender entering and
22 remaining in a residential substance use disorder treatment program
23 certified by the department of health for a period set by the court
24 ~~((between three and))~~ up to six months with treatment completion and
25 continued care delivered in accordance with the American society of
26 addiction medicine criteria.

27 (b) The sentence may include an indeterminate term of confinement
28 of no more than thirty days in a facility operated or utilized under
29 contract by the county in order to facilitate direct transfer to a
30 residential substance use disorder treatment facility.

31 (2) (a) During any period of community custody, the court shall
32 impose~~((, as conditions of community custody,))~~ treatment and other
33 conditions ~~((as proposed in the examination report completed pursuant~~
34 ~~to RCW 9.94A.660))~~ .

35 (b) ~~((If the court imposes a term of community custody, the))~~ The
36 department shall, within available resources, make substance use
37 disorder assessment and treatment services available to the offender
38 during ~~((the))~~ any term of community custody, and within available

1 resources, make domestic violence treatment services available to a
2 domestic violence offender during the term of community custody.

3 (3) (a) If the court imposes a sentence under this section, the
4 treatment provider must send the treatment plan to the court within
5 thirty days of the offender's arrival to the residential substance
6 use disorder treatment program and, when applicable, the domestic
7 violence treatment program.

8 (b) Upon receipt of the plan, the court shall schedule a progress
9 hearing during the period of (~~residential substance use disorder~~)
10 treatment, and schedule a treatment termination hearing for three
11 months before the expiration of the term of community custody.

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

17 (4) At a progress hearing or treatment termination hearing, the
18 court may:

19 (a) Authorize the department to terminate the offender's
20 community custody status on the expiration date determined under
21 subsection (1) of this section;

22 (b) Continue the hearing to a date before the expiration date of
23 community custody, with or without modifying the conditions of
24 community custody; or

25 (c) Impose a term of total confinement equal to one-half the
26 midpoint of the standard sentence range, followed by a term of
27 community custody under RCW 9.94A.701.

28 (5) If the court imposes a term of total confinement, the
29 department shall, within available resources, make substance use
30 disorder assessment and treatment services available to the offender
31 during the term of total confinement and subsequent term of community
32 custody.

33 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2021.

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