
SUBSTITUTE HOUSE BILL 1791

State of Washington

61st Legislature

2009 Regular Session

By House Human Services (originally sponsored by Representatives Dickerson, O'Brien, Hurst, Green, Dammeier, Morrell, Orwall, Walsh, and Wood; by request of Department of Corrections)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to clarifying certain community custody and drug
2 offender sentencing alternative sentencing provisions; amending RCW
3 9.94A.505 and 9.94A.660; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.505 and 2008 c 231 s 25 are each amended to read
6 as follows:

7 (1) When a person is convicted of a felony, the court shall impose
8 punishment as provided in this chapter.

9 (2)(a) The court shall impose a sentence as provided in the
10 following sections and as applicable in the case:

11 (i) Unless another term of confinement applies, a sentence within
12 the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

13 (ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

14 (iii) RCW 9.94A.570, relating to persistent offenders;

15 (iv) RCW 9.94A.540, relating to mandatory minimum terms;

16 (v) RCW 9.94A.650, relating to the first-time offender waiver;

17 (vi) RCW 9.94A.660, relating to the drug offender sentencing
18 alternative;

1 (vii) RCW 9.94A.670, relating to the special sex offender
2 sentencing alternative;

3 (viii) RCW (~~9.94A.712~~) 9.94A.507, relating to certain sex
4 offenses;

5 (ix) RCW 9.94A.535, relating to exceptional sentences;

6 (x) RCW 9.94A.589, relating to consecutive and concurrent
7 sentences;

8 (xi) RCW 9.94A.603, relating to felony driving while under the
9 influence of intoxicating liquor or any drug and felony physical
10 control of a vehicle while under the influence of intoxicating liquor
11 or any drug.

12 (b) If a standard sentence range has not been established for the
13 offender's crime, the court shall impose a determinate sentence which
14 may include not more than one year of confinement; community
15 restitution work; a term of community custody under RCW 9.94A.702 not
16 to exceed one year; and/or other legal financial obligations. The
17 court may impose a sentence which provides more than one year of
18 confinement and a community custody term under RCW 9.94A.701 if the
19 court finds reasons justifying an exceptional sentence as provided in
20 RCW 9.94A.535.

21 (3) If the court imposes a sentence requiring confinement of thirty
22 days or less, the court may, in its discretion, specify that the
23 sentence be served on consecutive or intermittent days. A sentence
24 requiring more than thirty days of confinement shall be served on
25 consecutive days. Local jail administrators may schedule court-ordered
26 intermittent sentences as space permits.

27 (4) If a sentence imposed includes payment of a legal financial
28 obligation, it shall be imposed as provided in RCW 9.94A.750,
29 9.94A.753, 9.94A.760, and 43.43.7541.

30 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
31 court may not impose a sentence providing for a term of confinement or
32 community custody that exceeds the statutory maximum for the crime as
33 provided in chapter 9A.20 RCW.

34 (6) The sentencing court shall give the offender credit for all
35 confinement time served before the sentencing if that confinement was
36 solely in regard to the offense for which the offender is being
37 sentenced.

1 (7) The court shall order restitution as provided in RCW 9.94A.750
2 and 9.94A.753.

3 (8) As a part of any sentence, the court may impose and enforce
4 crime-related prohibitions and affirmative conditions as provided in
5 this chapter.

6 (9) In any sentence of partial confinement, the court may require
7 the offender to serve the partial confinement in work release, in a
8 program of home detention, on work crew, or in a combined program of
9 work crew and home detention.

10 **Sec. 2.** RCW 9.94A.660 and 2008 c 231 s 30 are each amended to read
11 as follows:

12 (1) An offender is eligible for the special drug offender
13 sentencing alternative if:

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

17 (b) The offender is convicted of a felony that is not a felony
18 driving while under the influence of intoxicating liquor or any drug
19 under RCW 46.61.502(6) or felony physical control of a vehicle while
20 under the influence of intoxicating liquor or any drug under RCW
21 46.61.504(6);

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

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

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

36 (f) The standard sentence range for the current offense is greater
37 than one year; and

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

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

9 ~~(a) Whether the offender suffers from drug addiction;~~

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

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

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

18 ~~(3) The examination report must contain:~~

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

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

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

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

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

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

33 ~~(4) After receipt of the examination report,)) (3) If the
34 sentencing court determines that the offender is eligible for this
35 alternative and that a sentence under this section is appropriate, the
36 court shall waive imposition of a sentence within the standard sentence
37 range and impose a sentence consisting of either a prison-based
38 alternative under subsection ~~((+5)) (4) of this section or a~~~~

1 residential chemical dependency treatment-based alternative under
2 subsection ((+6+)) (5) of this section. If the court is considering
3 the residential chemical dependency treatment-based alternative under
4 subsection (5) of this section, then the court may order an examination
5 of the offender as described in subsection (5) of this section. The
6 residential chemical dependency treatment-based alternative is only
7 available if the midpoint of the standard range is twenty-four months
8 or less.

9 ((+5+)) (4) The prison-based alternative shall include:

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

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

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

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

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

36 ((+6+)) (5)(a) If the court is considering imposing a sentence
37 under the residential chemical dependency treatment-based alternative

1 in this subsection, then the court may order an examination of the
2 offender. The examination shall, at a minimum, address the following
3 issues:

4 (i) Whether the offender suffers from drug addiction;

5 (ii) Whether the addiction is such that there is a probability that
6 criminal behavior will occur in the future;

7 (iii) Whether effective treatment for the offender's addiction is
8 available from a provider that has been licensed or certified by the
9 division of alcohol and substance abuse of the department of social and
10 health services; and

11 (iv) Whether the offender and the community will benefit from the
12 use of the alternative.

13 (b) The examination report must also contain:

14 (i) A proposed monitoring plan, including any requirements
15 regarding living conditions, lifestyle requirements, and monitoring by
16 family members and others; and

17 (ii) Recommended crime-related prohibitions and affirmative
18 conditions.

19 (c) The residential chemical dependency treatment-based alternative
20 shall include:

21 ~~((a))~~ (i) A term of community custody equal to one-half of the
22 midpoint of the standard sentence range or two years, whichever is
23 greater, conditioned on the offender entering and remaining in
24 residential chemical dependency treatment certified under chapter
25 70.96A RCW for a period set by the court between three and six months.
26 If the court imposes a term of community custody, the department shall,
27 within available resources, make chemical dependency assessment and
28 treatment services available to the offender during the term of
29 community custody. The court shall impose, as conditions of community
30 custody, treatment and other conditions as proposed in the plan under
31 (b) of this subsection (~~((3)(b) of this section)~~). The department may
32 impose conditions and sanctions as authorized in RCW 9.94A.633,
33 9.94A.703, 9.94A.704, 9.94A.737, and 9.94A.740. If the court imposes
34 a sentence under this subsection, then the treatment provider must send
35 the treatment plan to the court within thirty days of the offender's
36 arrival to the residential chemical dependency treatment program. The
37 court shall schedule a progress hearing during the period of

1 residential chemical dependency treatment, and schedule a treatment
2 termination hearing for three months before the expiration of the term
3 of community custody;

4 ~~((b))~~ (ii) Before the progress hearing and treatment termination
5 hearing, the treatment provider and the department shall submit written
6 reports to the court and parties regarding the offender's compliance
7 with treatment and monitoring requirements, and recommendations
8 regarding termination from treatment. At the hearing, the court may:

9 ~~((i))~~ (A) Authorize the department to terminate the offender's
10 community custody status on the expiration date determined under
11 ~~((a))~~ (c)(i) of this subsection; or

12 ~~((ii))~~ (B) Continue the hearing to a date before the expiration
13 date of community custody, with or without modifying the conditions of
14 community custody; or

15 ~~((iii))~~ (C) Impose a term of total confinement equal to one-half
16 the midpoint of the standard sentence range, followed by a term of
17 community custody under RCW 9.94A.701;

18 ~~((e))~~ (iii) If the court imposes a term of total confinement
19 under ~~((b)(iii))~~ (c)(ii)(C) of this subsection, the department shall,
20 within available resources, make chemical dependency assessment and
21 treatment services available to the offender during the terms of total
22 confinement and community custody.

23 ~~((7))~~ (6) The offender may be required to pay thirty dollars per
24 month while on community custody to offset the cost of monitoring for
25 alcohol or controlled substances.

26 ~~((8))~~ (7) The court may impose any of the following conditions:
27 (a) Pay all court-ordered legal financial obligations; or
28 (b) Perform community restitution work.

29 ~~((9))~~ (8)(a) The court may bring any offender sentenced under
30 this section back into court at any time on its own initiative to
31 evaluate the offender's progress in treatment or to determine if any
32 violations of the conditions of the sentence have occurred.

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

36 (c) The court may order the offender to serve a term of total
37 confinement within the standard range of the offender's current offense

1 at any time during the period of community custody if the offender
2 violates the conditions or requirements of the sentence or if the
3 offender is failing to make satisfactory progress in treatment.

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

7 ~~((+10+))~~ (9) In serving a term of community custody imposed upon
8 failure to complete, or administrative termination from, the special
9 drug offender sentencing alternative program, the offender shall
10 receive no credit for time served in community custody prior to
11 termination of the offender's participation in the program.

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

20 ~~((+12+))~~ (11) An offender sentenced under this section shall be
21 subject to all rules relating to earned release time with respect to
22 any period served in total confinement.

23 ~~((+13+))~~ (12) Costs of examinations and preparing treatment plans
24 under ~~((subsections (2) and (3) of))~~ this section may be paid, at the
25 option of the county, from funds provided to the county from the
26 criminal justice treatment account under RCW 70.96A.350.

27 NEW SECTION. **Sec. 3.** This act takes effect August 1, 2009.

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