
HOUSE BILL 1722

State of Washington

57th Legislature

2001 Regular Session

By Representatives Dickerson, O'Brien, Kagi and McIntire

Read first time 02/01/2001. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sentencing of substance abuse crimes; reenacting
2 and amending RCW 9.94A.120; adding a new section to chapter 9.94A RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** This act shall be known as the substance
6 abuse and crime prevention act.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
8 to read as follows:

9 (1) **Community custody.** Notwithstanding the statutory maximum
10 sentence or any other provision of this chapter, and except as provided
11 in subsection (2) of this section, an offender convicted of delivery or
12 possession of a controlled substance under chapter 69.50 RCW or a
13 criminal attempt, criminal solicitation, or criminal conspiracy to
14 commit such a violation under chapter 9A.28 RCW shall be sentenced to
15 community custody.

16 (2) **Eligibility for community custody.** An offender is ineligible
17 for community custody if:

1 (a) The offender has, before the commission of the offense under
2 subsection (1) of this section, been convicted on two or more separate
3 occasions, whether in this state or elsewhere, of a felony classified
4 under subsection (1) of this section;

5 (b) The offender has current or prior convictions for a sex offense
6 in this state, another state, or the United States;

7 (c) The offender has current convictions for a violent offense in
8 this state, another state, or the United States;

9 (d) The offender has prior convictions for a violent offense in
10 this state, another state, or the United States unless the offender has
11 spent five consecutive years in the community without being convicted
12 of any new offenses;

13 (e) The violation involves a sentence enhancement under RCW
14 9.94A.310 (3) or (4);

15 (f) The violation involves the manufacture, delivery, or possession
16 with intent to deliver methamphetamine, its salts, isomers, and salts
17 of its isomers as defined in RCW 69.50.206(d)(2);

18 (g) The offender refuses to participate in the crime-related
19 treatment or counseling services required under subsections (3) and (5)
20 of this section as a condition to his or her community custody; and

21 (h) The offender (i) has been convicted on two separate occasions
22 of delivery or possession of a controlled substance under chapter 69.50
23 RCW or a criminal attempt, criminal solicitation, or criminal
24 conspiracy to commit such a violation under chapter 9A.28 RCW; (ii) has
25 participated in two separate courses of crime-related treatment or
26 counseling services pursuant to subsection (5) of this section; and
27 (iii) is found by the court to be unamenable to crime-related treatment
28 or counseling services pursuant to subsection (5)(c) of this section.

29 (3) **Community custody conditions.** Unless a condition is waived by
30 the court, the term of community custody for an offender sentenced
31 pursuant to this section shall include the following conditions:

32 (a) The offender shall report to and be available for contact with
33 the assigned community corrections officer as directed;

34 (b) The offender shall work at department of corrections-approved
35 education, employment, and/or community service;

36 (c) The offender shall not possess or consume controlled substances
37 except pursuant to lawfully issued prescriptions;

38 (d) The offender shall participate in crime-related treatment or
39 counseling services pursuant to subsection (5) of this section;

1 (e) The offender shall pay supervision fees as determined by the
2 department of corrections; and

3 (f) The offender shall submit to affirmative acts necessary to
4 monitor compliance with the orders of the court as required by the
5 department.

6 (4) **Affirmative conditions.** As a part of any sentence imposed
7 under subsection (1) of this section, the court may also order any of
8 the following special conditions:

9 (a) The offender shall remain within, or outside of, a specified
10 geographical boundary;

11 (b) The offender shall not have direct or indirect contact with the
12 victim of the crime or a specified class of individuals;

13 (c) The offender shall not consume alcohol;

14 (d) The offender shall, if reasonably able to do so, contribute to
15 his or her own crime-related treatment or counseling services required
16 under subsection (5) of this section; and

17 (e) The offender shall comply with any crime-related prohibitions.

18 (5) **Drug treatment/counseling.** (a) Within seven days of an order
19 imposing community custody under subsection (1) of this section, the
20 department of corrections shall notify the drug treatment provider
21 designated to provide the crime-related treatment or counseling
22 services to the offender. Within thirty days of receiving that notice,
23 the treatment provider shall prepare a treatment plan and forward it to
24 the department of corrections. On a quarterly basis after the offender
25 begins the drug treatment program, the treatment provider shall prepare
26 and forward a progress report to the department of corrections.

27 (b) If at any point during the course of drug treatment the
28 treatment provider notifies the department of corrections that the
29 offender is unamenable to the drug treatment being provided, but may be
30 amenable to other drug treatments or related programs, the department
31 may modify the terms of community custody to ensure that the offender
32 receives the appropriate drug treatment or program. The department may
33 not impose conditions that are contrary to those ordered by the court
34 and may not contravene or decrease court-imposed conditions. The
35 department shall notify the offender in writing of any such conditions
36 or modifications. In setting, modifying, and enforcing conditions of
37 community custody, the department shall be deemed to be performing a
38 quasi-judicial function.

1 (c) If at any point during the course of drug treatment the
2 treatment provider notifies the department that the offender is
3 unamenable to the drug treatment provided and other forms of drug
4 treatment, the department may petition the court to revoke community
5 custody. At the revocation hearing, unless the offender proves by a
6 preponderance of the evidence that there is a drug treatment program to
7 which he is amenable, the court may revoke community custody and impose
8 other available sanctions pursuant to subsection (6) of this section.

9 (d) Crime-related treatment or counseling services required under
10 subsections (3) and (5) of this section that are a required condition
11 of community custody may not exceed twelve months, provided, however,
12 that additional aftercare services as a condition of community custody
13 may be required for up to six months.

14 (6) **Revocation.** For an offender sentenced to a term of community
15 custody under subsection (1) of this section, who violates his or her
16 condition of community custody and as a result has had his or her
17 community custody status revoked by the court, the court may impose a
18 sanction of up to sixty days for each violation. The court may impose
19 sanctions such as home detention with electronic monitoring, inpatient
20 treatment, daily reporting, curfew, community service, education or
21 counseling services, supervision enhanced through electronic
22 monitoring, or any other sanctions available in the community.

23 (7) **Dismissal of charges upon successful completion of drug**
24 **treatment.** At any time after completion of drug treatment required
25 under subsections (3) and (5) of this section, an offender may petition
26 the sentencing court for dismissal of the charges. If the court finds
27 that the offender successfully completed drug treatment, and
28 substantially complied with the conditions of community custody, the
29 conviction on which the community custody was based shall be set aside
30 and the court shall dismiss the indictment or information against the
31 offender. In addition, the arrest on which the conviction was based
32 shall be deemed to have never occurred and the offender shall
33 thereafter be released from all penalties and disabilities resulting
34 from the offense of which he or she has been convicted.

35 **Sec. 3.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and 2000
36 c 28 s 5 are each reenacted and amended to read as follows:

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

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

3 (i) Unless another term of confinement applies, the court shall
4 impose a sentence within the standard sentence range established in RCW
5 9.94A.310;

6 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

7 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

8 (iv) RCW 9.94A.383, relating to community custody for offenders
9 whose term of confinement is one year or less;

10 (v) RCW 9.94A.--- (section 2 of this act), relating to community
11 custody for delivery or possession of a controlled substance;

12 (vi) RCW 9.94A.560, relating to persistent offenders;

13 ~~((vi))~~ (vii) RCW 9.94A.590, relating to mandatory minimum terms;

14 ~~((vii))~~ (viii) RCW 9.94A.650, relating to the first-time offender
15 waiver;

16 ~~((viii))~~ (ix) RCW 9.94A.660, relating to the drug offender
17 sentencing alternative;

18 ~~((ix))~~ (x) RCW 9.94A.670, relating to the special sex offender
19 sentencing alternative;

20 ~~((x))~~ (xi) RCW 9.94A.390, relating to exceptional sentences;

21 ~~((xi))~~ (xii) RCW 9.94A.400, relating to consecutive and
22 concurrent sentences.

23 (b) If a standard sentence range has not been established for the
24 offender's crime, the court shall impose a determinate sentence which
25 may include not more than one year of confinement; community service
26 work; until July 1, 2000, a term of community supervision not to exceed
27 one year and on and after July 1, 2000, a term of community custody not
28 to exceed one year, subject to conditions and sanctions as authorized
29 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
30 The court may impose a sentence which provides more than one year of
31 confinement if the court finds reasons justifying an exceptional
32 sentence as provided in RCW 9.94A.390.

33 (3) If the court imposes a sentence requiring confinement of thirty
34 days or less, the court may, in its discretion, specify that the
35 sentence be served on consecutive or intermittent days. A sentence
36 requiring more than thirty days of confinement shall be served on
37 consecutive days. Local jail administrators may schedule court-ordered
38 intermittent sentences as space permits.

1 (4) If a sentence imposed includes payment of a legal financial
2 obligation, it shall be imposed as provided in RCW 9.94A.140,
3 9.94A.142, and 9.94A.145.

4 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
5 court may not impose a sentence providing for a term of confinement or
6 community supervision, community placement, or community custody which
7 exceeds the statutory maximum for the crime as provided in chapter
8 9A.20 RCW.

9 (6) The sentencing court shall give the offender credit for all
10 confinement time served before the sentencing if that confinement was
11 solely in regard to the offense for which the offender is being
12 sentenced.

13 (7) The court shall order restitution as provided in RCW 9.94A.140
14 and 9.94A.142.

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

18 (9) The court may order an offender whose sentence includes
19 community placement or community supervision to undergo a mental status
20 evaluation and to participate in available outpatient mental health
21 treatment, if the court finds that reasonable grounds exist to believe
22 that the offender is a mentally ill person as defined in RCW 71.24.025,
23 and that this condition is likely to have influenced the offense. An
24 order requiring mental status evaluation or treatment must be based on
25 a presentence report and, if applicable, mental status evaluations that
26 have been filed with the court to determine the offender's competency
27 or eligibility for a defense of insanity. The court may order
28 additional evaluations at a later date if deemed appropriate.

29 (10) In any sentence of partial confinement, the court may require
30 the offender to serve the partial confinement in work release, in a
31 program of home detention, on work crew, or in a combined program of
32 work crew and home detention.

33 (11) In sentencing an offender convicted of a crime of domestic
34 violence, as defined in RCW 10.99.020, if the offender has a minor
35 child, or if the victim of the offense for which the offender was
36 convicted has a minor child, the court may, as part of any term of
37 community supervision, community placement, or community custody, order

- 1 the offender to participate in a domestic violence perpetrator program
- 2 approved under RCW 26.50.150.

--- END ---