
SENATE BILL 6669

State of Washington 59th Legislature 2006 Regular Session

By Senators Roach, Pflug, Benson, Morton, Schmidt, Schoesler,
Zarelli, Parlette, Hewitt and Mulliken

Read first time 01/18/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to the special sex offender sentencing alternative;
2 and reenacting and amending RCW 9.94A.670.

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

4 **Sec. 1.** RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are
5 each reenacted and amended to read as follows:

6 (1) Unless the context clearly requires otherwise, the definitions
7 in this subsection apply to this section only.

8 (a) "Judicial officer" means a person authorized to hold or preside
9 over a court.

10 (b) "School employee" means any employee, including coaches, of a
11 common school defined in RCW 28A.150.020 or a grade kindergarten
12 through twelve employee of a private school under chapter 28A.195 RCW,
13 who is not enrolled as a student of the common school or private
14 school.

15 (c) "Sex offender treatment provider" or "treatment provider" means
16 a certified sex offender treatment provider or a certified affiliate
17 sex offender treatment provider as defined in RCW 18.155.020.

18 ((+b+)) (d) "Social service counselor" means anyone engaged in a
19 professional capacity during the regular course of employment in

1 encouraging or promoting the health, welfare, support, or education of
2 children, or providing social services to adults or families, including
3 mental health, drug and alcohol treatment, and domestic violence
4 programs, whether in an individual capacity, or as an employee or agent
5 of any public or private organization or institution.

6 (e) "Substantial bodily harm" means bodily injury that involves a
7 temporary but substantial disfigurement, or that causes a temporary but
8 substantial loss or impairment of the function of any body part or
9 organ, or that causes a fracture of any body part or organ.

10 ((+e)) (f) "Victim" means any person who has sustained emotional,
11 psychological, physical, or financial injury to person or property as
12 a result of the crime charged. "Victim" also means a parent or
13 guardian of a victim who is a minor child unless the parent or guardian
14 is the perpetrator of the offense.

15 (2) An offender is eligible for the special sex offender sentencing
16 alternative if:

17 (a) The offender has been convicted of a sex offense other than a
18 violation of RCW 9A.44.050 or a sex offense that is also a serious
19 violent offense;

20 (b) The offender has no prior convictions for a sex offense as
21 defined in RCW 9.94A.030 or any other felony sex offenses in this or
22 any other state;

23 (c) The offender has no prior adult convictions for a violent
24 offense that was committed within five years of the date the current
25 offense was committed;

26 (d) The offense did not result in substantial bodily harm to the
27 victim;

28 (e) The offender had an established relationship with, or
29 connection to, the victim such that the sole connection with the victim
30 was not the commission of the crime; ((and))

31 (f) The offender is not a school employee who committed the offense
32 against a registered student of the school;

33 (g) The offender is not a social service counselor who committed
34 the offense against a patient;

35 (h) The offender is not an elected official or judicial officer who
36 used his or her position, or engaged in misconduct, to commit the
37 offense;

38 (i) The offender is not a member of the clergy or a priest; and

1 (j) The offender's standard sentence range for the offense includes
2 the possibility of confinement for less than eleven years.

3 (3) If the court finds the offender is eligible for this
4 alternative, the court, on its own motion or the motion of the state or
5 the offender, may order an examination to determine whether the
6 offender is amenable to treatment.

7 (a) The report of the examination shall include at a minimum the
8 following:

9 (i) The offender's version of the facts and the official version of
10 the facts;

11 (ii) The offender's offense history;

12 (iii) An assessment of problems in addition to alleged deviant
13 behaviors;

14 (iv) The offender's social and employment situation; and

15 (v) Other evaluation measures used.

16 The report shall set forth the sources of the examiner's
17 information.

18 (b) The examiner shall assess and report regarding the offender's
19 amenability to treatment and relative risk to the community. A
20 proposed treatment plan shall be provided and shall include, at a
21 minimum:

22 (i) Frequency and type of contact between offender and therapist;

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

25 (iii) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (iv) Anticipated length of treatment; and

29 (v) Recommended crime-related prohibitions and affirmative
30 conditions, which must include, to the extent known, an identification
31 of specific activities or behaviors that are precursors to the
32 offender's offense cycle, including, but not limited to, activities or
33 behaviors such as viewing or listening to pornography or use of alcohol
34 or controlled substances.

35 (c) The court on its own motion may order, or on a motion by the
36 state shall order, a second examination regarding the offender's
37 amenability to treatment. The examiner shall be selected by the party

1 making the motion. The offender shall pay the cost of any second
2 examination ordered unless the court finds the defendant to be indigent
3 in which case the state shall pay the cost.

4 (4) After receipt of the reports, the court shall consider whether
5 the offender and the community will benefit from use of this
6 alternative, consider whether the alternative is too lenient in light
7 of the extent and circumstances of the offense, consider whether the
8 offender has victims in addition to the victim of the offense, consider
9 whether the offender is amenable to treatment, consider the risk the
10 offender would present to the community, to the victim, or to persons
11 of similar age and circumstances as the victim, and consider the
12 victim's opinion whether the offender should receive a treatment
13 disposition under this section. The court shall give great weight to
14 the victim's opinion whether the offender should receive a treatment
15 disposition under this section. If the sentence imposed is contrary to
16 the victim's opinion, the court shall enter written findings stating
17 its reasons for imposing the treatment disposition. The fact that the
18 offender admits to his or her offense does not, by itself, constitute
19 amenability to treatment. If the court determines that this
20 alternative is appropriate, the court shall then impose a sentence or,
21 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
22 standard sentence range. If the sentence imposed is less than eleven
23 years of confinement, the court may suspend the execution of the
24 sentence and impose the following conditions of suspension:

25 (a) The court shall order the offender to serve a term of
26 confinement of up to twelve months or the maximum term within the
27 standard range, whichever is less. The court may order the offender to
28 serve a term of confinement greater than twelve months or the maximum
29 term within the standard range based on the presence of an aggravating
30 circumstance listed in RCW 9.94A.535(~~(+2)~~) (3). In no case shall the
31 term of confinement exceed the statutory maximum sentence for the
32 offense. The court may order the offender to serve all or part of his
33 or her term of confinement in partial confinement. An offender
34 sentenced to a term of confinement under this subsection is not
35 eligible for earned release under RCW 9.92.151 or 9.94A.728.

36 (b) The court shall place the offender on community custody for the
37 length of the suspended sentence, the length of the maximum term

1 imposed pursuant to RCW 9.94A.712, or three years, whichever is
2 greater, and require the offender to comply with any conditions imposed
3 by the department under RCW 9.94A.720.

4 (c) The court shall order treatment for any period up to five years
5 in duration. The court, in its discretion, shall order outpatient sex
6 offender treatment or inpatient sex offender treatment, if available.
7 A community mental health center may not be used for such treatment
8 unless it has an appropriate program designed for sex offender
9 treatment. The offender shall not change sex offender treatment
10 providers or treatment conditions without first notifying the
11 prosecutor, the community corrections officer, and the court. If any
12 party or the court objects to a proposed change, the offender shall not
13 change providers or conditions without court approval after a hearing.

14 (d) As conditions of the suspended sentence, the court shall impose
15 specific prohibitions and affirmative conditions relating to the known
16 precursor activities or behaviors identified in the proposed treatment
17 plan under subsection (3)(b)(v) of this section or identified in an
18 annual review under subsection (7)(b) of this section.

19 (5) As conditions of the suspended sentence, the court may impose
20 one or more of the following:

21 (a) Crime-related prohibitions;

22 (b) Require the offender to devote time to a specific employment or
23 occupation;

24 (c) Require the offender to remain within prescribed geographical
25 boundaries and notify the court or the community corrections officer
26 prior to any change in the offender's address or employment;

27 (d) Require the offender to report as directed to the court and a
28 community corrections officer;

29 (e) Require the offender to pay all court-ordered legal financial
30 obligations as provided in RCW 9.94A.030;

31 (f) Require the offender to perform community restitution work; or

32 (g) Require the offender to reimburse the victim for the cost of
33 any counseling required as a result of the offender's crime.

34 (6) At the time of sentencing, the court shall set a treatment
35 termination hearing for three months prior to the anticipated date for
36 completion of treatment.

37 (7)(a) The sex offender treatment provider shall submit quarterly
38 reports on the offender's progress in treatment to the court and the

1 parties. The report shall reference the treatment plan and include at
2 a minimum the following: Dates of attendance, offender's compliance
3 with requirements, treatment activities, the offender's relative
4 progress in treatment, and any other material specified by the court at
5 sentencing.

6 (b) The court shall conduct a hearing on the offender's progress in
7 treatment at least once a year. At least fourteen days prior to the
8 hearing, notice of the hearing shall be given to the victim. The
9 victim shall be given the opportunity to make statements to the court
10 regarding the offender's supervision and treatment. At the hearing,
11 the court may modify conditions of community custody including, but not
12 limited to, crime-related prohibitions and affirmative conditions
13 relating to activities and behaviors identified as part of, or relating
14 to precursor activities and behaviors in, the offender's offense cycle
15 or revoke the suspended sentence.

16 (8) At least fourteen days prior to the treatment termination
17 hearing, notice of the hearing shall be given to the victim. The
18 victim shall be given the opportunity to make statements to the court
19 regarding the offender's supervision and treatment. Prior to the
20 treatment termination hearing, the treatment provider and community
21 corrections officer shall submit written reports to the court and
22 parties regarding the offender's compliance with treatment and
23 monitoring requirements, and recommendations regarding termination from
24 treatment, including proposed community custody conditions. The court
25 may order an evaluation regarding the advisability of termination from
26 treatment by a sex offender treatment provider who may not be the same
27 person who treated the offender under subsection (4) of this section or
28 any person who employs, is employed by, or shares profits with the
29 person who treated the offender under subsection (4) of this section
30 unless the court has entered written findings that such evaluation is
31 in the best interest of the victim and that a successful evaluation of
32 the offender would otherwise be impractical. The offender shall pay
33 the cost of the evaluation. At the treatment termination hearing the
34 court may: (a) Modify conditions of community custody, and either (b)
35 terminate treatment, or (c) extend treatment in two-year increments for
36 up to the remaining period of community custody.

37 (9)(a) If a violation of conditions other than a second violation
38 of the prohibitions or affirmative conditions relating to precursor

1 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
2 this section occurs during community custody, the department shall
3 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
4 the violation to the court and recommend revocation of the suspended
5 sentence as provided for in subsections (6) and (8) of this section.

6 (b) If a second violation of the prohibitions or affirmative
7 conditions relating to precursor behaviors or activities imposed under
8 subsection (4)(d) or (7)(b) of this section occurs during community
9 custody, the department shall refer the violation to the court and
10 recommend revocation of the suspended sentence as provided in
11 subsection (10) of this section.

12 (10) The court may revoke the suspended sentence at any time during
13 the period of community custody and order execution of the sentence if:
14 (a) The offender violates the conditions of the suspended sentence, or
15 (b) the court finds that the offender is failing to make satisfactory
16 progress in treatment. All confinement time served during the period
17 of community custody shall be credited to the offender if the suspended
18 sentence is revoked.

19 (11) The offender's sex offender treatment provider may not be the
20 same person who examined the offender under subsection (3) of this
21 section or any person who employs, is employed by, or shares profits
22 with the person who examined the offender under subsection (3) of this
23 section, unless the court has entered written findings that such
24 treatment is in the best interests of the victim and that successful
25 treatment of the offender would otherwise be impractical. Examinations
26 and treatment ordered pursuant to this subsection shall only be
27 conducted by certified sex offender treatment providers or certified
28 affiliate sex offender treatment providers under chapter 18.155 RCW
29 unless the court finds that:

30 (a) The offender has already moved to another state or plans to
31 move to another state for reasons other than circumventing the
32 certification requirements; or

33 (b)(i) No certified sex offender treatment providers or certified
34 affiliate sex offender treatment providers are available for treatment
35 within a reasonable geographical distance of the offender's home; and

36 (ii) The evaluation and treatment plan comply with this section and
37 the rules adopted by the department of health.

1 (12) If the offender is less than eighteen years of age when the
2 charge is filed, the state shall pay for the cost of initial evaluation
3 and treatment.

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