

SSB 5848 - S AMD TO S AMD (S-4222.1/19) 795
By Senator Zeiger

NOT CONSIDERED 12/23/2019

1 On page 5, after line 20, insert the following:

2 "Sec. 3. RCW 9.94A.660 and 2016 sp.s. c 29 s 524 are each
3 amended to read as follows:

4 (1) An offender is eligible for the special drug offender
5 sentencing alternative if:

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

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

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

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

24 (e) The offender has not been found by the United States attorney
25 general to be subject to a deportation detainer or order and does not
26 become subject to a deportation order during the period of the
27 sentence;

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

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

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

3 (3) If the sentencing court determines that the offender is
4 eligible for an alternative sentence under this section and that the
5 alternative sentence is appropriate, the court shall waive imposition
6 of a sentence within the standard sentence range and impose a
7 sentence consisting of either a prison-based alternative under RCW
8 9.94A.662 or a residential chemical dependency treatment-based
9 alternative under RCW 9.94A.664. The residential chemical dependency
10 treatment-based alternative is only available if the midpoint of the
11 standard range is twenty-four months or less.

12 (4) To assist the court in making its determination, the court
13 may order the department to complete either or both a risk assessment
14 report and a chemical dependency screening report as provided in RCW
15 9.94A.500.

16 (5) (a) If the court is considering imposing a sentence under the
17 residential chemical dependency treatment-based alternative, the
18 court may order an examination of the offender by the department. The
19 examination shall, at a minimum, address the following issues:

20 (i) Whether the offender suffers from ~~((drug—addiction))~~
21 substance use disorder;

22 (ii) Whether the ~~((addiction))~~ substance use disorder is such
23 that there is a probability that criminal behavior will occur in the
24 future;

25 (iii) Whether effective treatment for the offender's
26 ~~((addiction))~~ substance use disorder, including medication-assisted
27 treatment, if applicable, is available from a provider that has been
28 licensed or certified by the department of ~~((social—and))~~ health
29 ~~((services))~~; and

30 (iv) Whether the offender and the community will benefit from the
31 use of the alternative.

32 (b) The examination report must contain:

33 (i) A proposed monitoring plan, including any requirements
34 regarding living conditions, lifestyle requirements, and monitoring
35 by family members and others; and

36 (ii) Recommended crime-related prohibitions and affirmative
37 conditions.

38 (6) When a court imposes a sentence of community custody under
39 this section:

1 (a) The court may impose conditions as provided in RCW 9.94A.703
2 and may impose other affirmative conditions as the court considers
3 appropriate, including commencing and/or continuing medication-
4 assisted treatment, if applicable. In addition, an offender may be
5 required to pay thirty dollars per month while on community custody
6 to offset the cost of monitoring for alcohol or controlled
7 substances.

8 (b) The department may impose conditions and sanctions as
9 authorized in RCW 9.94A.704 and 9.94A.737, including commencing
10 and/or continuing medication-assisted treatment, if applicable.

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

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

18 (c) The court may order the offender to serve a term of total
19 confinement within the standard range of the offender's current
20 offense at any time during the period of community custody if the
21 offender violates the conditions or requirements of the sentence or
22 if the offender is failing to make satisfactory progress in
23 treatment.

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

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

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

35 (10) Costs of examinations and preparing treatment plans under a
36 special drug offender sentencing alternative may be paid, at the
37 option of the county, from funds provided to the county from the
38 criminal justice treatment account under RCW 71.24.580.

1 **Sec. 4.** RCW 9.94A.662 and 2009 c 389 s 4 are each amended to
2 read as follows:

3 (1) A sentence for a prison-based special drug offender
4 sentencing alternative shall include:

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

8 (b) One-half the midpoint of the standard sentence range as a
9 term of community custody, which must include appropriate substance
10 ~~((abuse))~~ use disorder treatment in a program that has been approved
11 and licensed by the ~~((division of alcohol and substance abuse of~~
12 ~~the))~~ department of ~~((social and))~~ health ~~((services))~~;

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

15 (d) An order that the offender either commence and/or continue
16 medication-assisted treatment, if deemed medically necessary;

17 (e) A requirement to submit to urinalysis or other testing to
18 monitor that status; and

19 ~~((e))~~ (f) A term of community custody pursuant to RCW 9.94A.701
20 to be imposed upon the failure to complete or administrative
21 termination from the special drug offender sentencing alternative
22 program.

23 (2) During incarceration in the state facility, offenders
24 sentenced under this section shall undergo a comprehensive substance
25 ~~((abuse))~~ use disorder assessment and receive, within available
26 resources, treatment services appropriate for the offender, including
27 commencing and/or continuing medication-assisted treatment, if
28 applicable. The treatment services shall be designed by the
29 ~~((division of alcohol and substance abuse of the))~~ department of
30 ~~((social and health services))~~ corrections, in cooperation with the
31 department of ~~((corrections))~~ health, and the health care authority.
32 Under no circumstances may an offender be allowed to possess
33 prescription medication used for medication-assisted treatment
34 outside of the direct supervision of a medical professional.
35 Possession of such medication outside of the direct supervision of a
36 medical professional must be treated as any other such similar
37 infraction.

38 (3) If the department finds that conditions of community custody
39 have been willfully violated, the offender may be reclassified to
40 serve the remaining balance of the original sentence. An offender who

1 fails to complete the program or who is administratively terminated
2 from the program shall be reclassified to serve the unexpired term of
3 his or her sentence as ordered by the sentencing court.

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

12 **Sec. 5.** RCW 9.94A.664 and 2009 c 389 s 5 are each amended to
13 read as follows:

14 (1) A sentence for a residential chemical dependency treatment-
15 based alternative shall include a term of community custody equal to
16 one-half the midpoint of the standard sentence range or two years,
17 whichever is greater, conditioned on the offender commencing and/or
18 continuing medication-assisted treatment, if applicable, and entering
19 and remaining in residential chemical dependency treatment certified
20 under chapter 70.96A RCW for a period set by the court (~~between~~
21 ~~three and six months~~) for a time determined to be clinically
22 necessary.

23 (2) (a) The court shall impose, as conditions of community
24 custody, treatment and other conditions, including commencing and/or
25 continuing medication-assisted treatment, if applicable as proposed
26 in the examination report completed pursuant to RCW 9.94A.660.

27 (b) If the court imposes a term of community custody, the
28 department shall, if the individual is not eligible for medicaid
29 services, within available resources, make (~~chemical dependency~~)
30 substance use disorder assessment and treatment services, including
31 medication-assisted treatment, if applicable, available to the
32 offender during the term of community custody.

33 (3) (a) If the court imposes a sentence under this section, the
34 treatment provider must send the treatment plan to the court within
35 thirty days of the offender's arrival to the residential chemical
36 dependency treatment program.

37 (b) Upon receipt of the plan, the court shall schedule a progress
38 hearing during the period of residential chemical dependency

1 treatment, and schedule a treatment termination hearing for three
2 months before the expiration of the term of community custody.

3 (c) Before the progress hearing and treatment termination
4 hearing, the treatment provider and the department shall submit
5 written reports to the court and parties regarding the offender's
6 compliance with treatment and monitoring requirements, and
7 recommendations regarding termination from treatment.

8 (4) At a progress hearing or treatment termination hearing, the
9 court may:

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

13 (b) Continue the hearing to a date before the expiration date of
14 community custody, with or without modifying the conditions of
15 community custody; or

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

19 (5) If the court imposes a term of total confinement, the
20 department shall, within available resources, make chemical
21 dependency assessment and treatment services, including medication-
22 assisted treatment, available to the offender as soon as possible
23 during the term of total confinement and subsequent term of community
24 custody.

25 NEW SECTION. **Sec. 6.** To the extent that long-term and short-
26 term savings are realized as the result of implementing medication-
27 assisted treatment, the department must reinvest those funds into
28 furthering medication-assisted treatment in state correctional
29 facilities.

30 NEW SECTION. **Sec. 7.** (1) To the extent that funds are
31 specifically appropriated for this purpose, and specifically with
32 regard to the efficacy of the special drug offender sentencing
33 alternatives and the use of medication-assisted treatment, the
34 Washington state institute for public policy shall study and report
35 on the following:

36 (a) The number of individuals who have been granted a special
37 drug offender sentencing alternative, and the type of alternative;

1 (b) The number of providers who have prescribed medication-
2 assisted treatment to individuals who are on a special drug offender
3 sentencing alternative;

4 (c) A description of resources available, and resources still
5 needed;

6 (d) The effectiveness of the special drug offender sentencing
7 alternatives program and medication-assisted treatment;

8 (e) The number of individuals diverted from longer sentences
9 because of participation in a special drug offender sentencing
10 alternative program in conjunction with medication-assisted
11 treatment;

12 (f) Any cost savings;

13 (g) Other approaches to special drug offender sentencing
14 alternatives and incorporating medication-assisted treatment;

15 (h) Appropriate timing and sequencing of substance use disorder
16 programming and medication-assisted treatment during incarceration;
17 and

18 (i) Other evidenced-based programs and policies regarding
19 medication-assisted treatment in correctional settings.

20 (2) The Washington state institute for public policy must deliver
21 its report to the governor and the appropriate committees of the
22 legislature by December 1, 2021.

23 (3) This section expires July 1, 2022."

24 Renumber the remaining sections consecutively and correct any
25 internal references accordingly.

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26 On page 9, line 18, after "9.94B.050," insert "9.94A.660,
27 9.94A.662, 9.94A.664,"

28 On page 9, line 19, after "date;" insert "providing an expiration
29 date;"

EFFECT: (1) Adds language that the court may order conditions and sanctions including commencing and/or continuing medication-assisted treatment, if applicable, and that the department of corrections (DOC) shall, within available resources, make chemical dependency

assessment and treatment services, including medication-assisted treatment, available to the offender as soon as possible during the term of total confinement and subsequent term of community custody.

(2) Adds Washington Institute for Public Policy (WSIPP) study, which expires July 1, 2022.

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