
SECOND SUBSTITUTE SENATE BILL 5293

State of Washington

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2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Nobles, Darneille, Das, Dhingra, Hasegawa, Keiser, Lovelett, Nguyen, Rivers, Salomon, Van De Wege, and Wilson, C.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to mental health sentencing alternatives;
2 amending RCW 9.94A.501, 9.94A.505, 9.94A.633, and 9.94A.6332;
3 reenacting and amending RCW 9.94A.701; adding a new section to
4 chapter 9.94A RCW; creating a new section; providing an effective
5 date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A
8 RCW to read as follows:

9 (1) A defendant is eligible for the mental health sentencing
10 alternative if:

11 (a) The defendant is convicted of a felony that is not a serious
12 violent offense or sex offense;

13 (b) The defendant is diagnosed with a serious mental illness
14 recognized by the diagnostic manual in use by mental health
15 professionals at the time of sentencing;

16 (c) The defendant and the community would benefit from
17 supervision and treatment, as determined by the judge; and

18 (d) The defendant is willing to participate in the sentencing
19 alternative.

20 (2) A motion for a sentence under this section may be made by any
21 party or the court, but is contingent upon the defendant's agreement

1 to participate in the sentencing alternative. To determine whether
2 the defendant has a serious mental illness, the court may rely on
3 information including reports completed pursuant to chapters 71.05
4 and 10.77 RCW, or other mental health professional as defined in RCW
5 71.05.020, or other information and records related to mental health
6 services. Information and records relating to mental health services
7 must be handled consistently with RCW 9.94A.500(2). If insufficient
8 information is available to determine whether a defendant has a
9 serious mental illness, the court may order an examination of the
10 defendant.

11 (3) To assist the court in its determination, the department
12 shall provide a written report, which shall be in the form of a
13 presentence investigation. Such report may be ordered by the court on
14 the motion of a party prior to conviction if such a report will
15 facilitate negotiations. The court may waive the production of this
16 report if sufficient information is available to the court to make a
17 determination under subsection (4) of this section. The report must
18 contain:

19 (a) A proposed treatment plan for the defendant's mental illness,
20 including at a minimum:

21 (i) The name and address of the treatment provider that has
22 agreed to provide treatment to the defendant, including an intake
23 evaluation, a psychiatric evaluation, and development of an
24 individualized plan of treatment which shall be submitted as soon as
25 possible to the department and the court; and

26 (ii) An agreement by the treatment provider to monitor the
27 progress of the defendant on the sentencing alternative and notify
28 the department and the court at any time during the duration of the
29 order if reasonable efforts to engage the defendant fail to produce
30 substantial compliance with court-ordered treatment conditions;

31 (b) A proposed monitoring plan, including any requirements
32 regarding living conditions, lifestyle requirements, and monitoring
33 by family members and others;

34 (c) Recommended crime-related prohibitions and affirmative
35 conditions; and

36 (d) A release of information, signed by the defendant, allowing
37 the parties and the department to confirm components of the treatment
38 and monitoring plan.

39 (4) After consideration of all available information and
40 determining whether the defendant is eligible, the court shall

1 consider whether the defendant and the community will benefit from
2 the use of this sentencing alternative. The court shall consider the
3 victim's opinion whether the defendant should receive a sentence
4 under this section. If the sentencing court determines that a
5 sentence under this section is appropriate, the court shall waive
6 imposition of the sentence within the standard range. The court shall
7 impose a term of community custody between 12 and 24 months if the
8 midpoint of the defendant's standard range sentence is less than or
9 equal to 36 months, and a term of community custody between 12 months
10 and 36 months if the midpoint of the defendant's standard range
11 sentence is longer than 36 months. The actual length of community
12 custody within these ranges shall be at the discretion of the court.

13 (5) If the court imposes an alternative sentence under this
14 section, the department shall assign a community corrections officer
15 to supervise the defendant. The department shall provide a community
16 corrections officer assigned under this section with appropriate
17 training in mental health to be determined by the department.

18 (6) (a) The court may schedule progress hearings for the defendant
19 to evaluate the defendant's progress in treatment and compliance with
20 conditions of supervision.

21 (b) Before any progress hearing, the department and the treatment
22 provider shall each submit a written report informing the parties of
23 the defendant's progress and compliance with treatment. At the
24 progress hearing, the court shall hear from the parties regarding the
25 defendant's compliance and may modify the conditions of community
26 custody if the modification serves the interests of justice and the
27 best interests of the defendant.

28 (7) (a) If the court imposes this sentencing alternative, the
29 court shall impose conditions under RCW 9.94A.703 that do not
30 conflict with this section and may impose any additional conditions
31 recommended by any of the written reports regarding the defendant.

32 (b) The court shall impose specific treatment conditions:

33 (i) Meet with treatment providers and follow the recommendations
34 provided in the individualized treatment plan as initially
35 constituted or subsequently modified by the treatment provider;

36 (ii) Take medications as prescribed, including monitoring of
37 compliance with medication if needed;

38 (iii) Refrain from using alcohol and nonprescribed controlled
39 substances if the defendant has a diagnosis of a substance use
40 disorder. The court may order the department to monitor for the use

1 of alcohol or nonprescribed controlled substances if the court
2 prohibits use of those substances.

3 (8) Treatment issues arising during supervision shall be
4 discussed collaboratively. The treatment provider, community
5 corrections officer, and any representative of the person's medical
6 assistance plan shall jointly determine intervention for violation of
7 a treatment condition. The community corrections officer shall have
8 the authority to address the violation independently if:

9 (a) The violation is safety related with respect to the defendant
10 or others;

11 (b) The treatment violation consists of decompensation related to
12 psychosis that presents a risk to the community or the defendant and
13 cannot be mitigated by community intervention. The community
14 corrections officer may intervene with available resources such as a
15 designated crisis responder; or

16 (c) The violation relates to a standard condition for
17 supervision.

18 (9) The community corrections officer, treatment provider, and
19 any engaged representative of the defendant's medical assistance plan
20 should collaborate prior to a progress update to the court. Required
21 treatment interventions taken between court progress hearings shall
22 be reported to the court as a part of the regular progress update to
23 the court.

24 (10) The court may schedule a review hearing for a defendant
25 under this sentencing alternative at any time to evaluate the
26 defendant's progress with treatment or to determine if any violations
27 have occurred.

28 (a) At a review hearing the court may modify the terms of the
29 community custody or impose sanctions if the court finds that the
30 conditions have been violated or that different or additional terms
31 are in the best interest of the defendant.

32 (b) The court may order the defendant to serve a term of total or
33 partial confinement for violating the terms of community custody or
34 failing to make satisfactory progress in treatment.

35 (11) The court shall schedule a termination hearing one month
36 prior to the end of the defendant's community custody. A termination
37 hearing may also be scheduled if the department or the state reports
38 that the defendant has violated the terms of community custody
39 imposed by the court. At that hearing, the court may:

1 (a) Authorize the department to terminate the defendant's
2 community custody status on the expiration date; or

3 (b) Continue the hearing to a date before the expiration date of
4 community custody, with or without modifying the conditions of
5 community custody; or

6 (c) Revoke the sentencing alternative and impose a term of total
7 or partial confinement within the standard sentence range or impose
8 an exceptional sentence below the standard sentencing range if
9 compelling reasons are found by the court or the parties agree to the
10 downward departure. The defendant shall receive credit for time
11 served while supervised in the community against any term of total
12 confinement. The court must issue written findings indicating a
13 substantial and compelling reason to revoke this sentencing
14 alternative.

15 (12) For the purposes of this section:

16 (a) "Serious mental illness" means a mental, behavioral, or
17 emotional disorder resulting in a serious functional impairment,
18 which substantially interferes with or limits one or more major life
19 activities.

20 (b) "Victim" means any person who has sustained emotional,
21 psychological, physical, or financial injury to person or property as
22 a result of the crime charged. "Victim" also means a parent or
23 guardian of a victim who is a minor child unless the parent or
24 guardian is the perpetrator of the offense.

25 **Sec. 2.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to
26 read as follows:

27 (1) The department shall supervise the following offenders who
28 are sentenced to probation in superior court, pursuant to RCW
29 9.92.060, 9.95.204, or 9.95.210:

30 (a) Offenders convicted of:

31 (i) Sexual misconduct with a minor second degree;

32 (ii) Custodial sexual misconduct second degree;

33 (iii) Communication with a minor for immoral purposes; and

34 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

35 (b) Offenders who have:

36 (i) A current conviction for a repetitive domestic violence
37 offense where domestic violence has been pleaded and proven after
38 August 1, 2011; and

1 (ii) A prior conviction for a repetitive domestic violence
2 offense or domestic violence felony offense where domestic violence
3 has been pleaded and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by the
5 department pursuant to this section shall be placed on community
6 custody.

7 (3) The department shall supervise every felony offender
8 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
9 whose risk assessment classifies the offender as one who is at a high
10 risk to reoffend.

11 (4) Notwithstanding any other provision of this section, the
12 department shall supervise an offender sentenced to community custody
13 regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious
15 violent offense and was sentenced to a term of community custody
16 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

17 (b) Has been identified by the department as a dangerous mentally
18 ill offender pursuant to RCW 72.09.370;

19 (c) Has an indeterminate sentence and is subject to parole
20 pursuant to RCW 9.95.017;

21 (d) Has a current conviction for violating RCW 9A.44.132(1)
22 (failure to register) and was sentenced to a term of community
23 custody pursuant to RCW 9.94A.701;

24 (e)(i) Has a current conviction for a domestic violence felony
25 offense where domestic violence has been pleaded and proven after
26 August 1, 2011, and a prior conviction for a repetitive domestic
27 violence offense or domestic violence felony offense where domestic
28 violence was pleaded and proven after August 1, 2011. This subsection
29 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

30 (ii) Has a current conviction for a domestic violence felony
31 offense where domestic violence was pleaded and proven. The state and
32 its officers, agents, and employees shall not be held criminally or
33 civilly liable for its supervision of an offender under this
34 subsection (4)(e)(ii) unless the state and its officers, agents, and
35 employees acted with gross negligence;

36 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
37 9.94A.670, ~~((or))~~ 9.94A.711, or section 1 of this act;

38 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

1 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
2 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
3 (felony DUI), or RCW 46.61.504(6) (felony physical control).

4 (5) The department shall supervise any offender who is released
5 by the indeterminate sentence review board and who was sentenced to
6 community custody or subject to community custody under the terms of
7 release.

8 (6) The department is not authorized to, and may not, supervise
9 any offender sentenced to a term of community custody or any
10 probationer unless the offender or probationer is one for whom
11 supervision is required under this section or RCW 9.94A.5011.

12 (7) The department shall conduct a risk assessment for every
13 felony offender sentenced to a term of community custody who may be
14 subject to supervision under this section or RCW 9.94A.5011.

15 (8) The period of time the department is authorized to supervise
16 an offender under this section may not exceed the duration of
17 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
18 through ~~((+8))~~ (9), or 9.94A.702, except in cases where the court
19 has imposed an exceptional term of community custody under RCW
20 9.94A.535.

21 (9) The period of time the department is authorized to supervise
22 an offender under this section may be reduced by the earned award of
23 supervision compliance credit pursuant to RCW 9.94A.717.

24 **Sec. 3.** RCW 9.94A.505 and 2019 c 191 s 3 are each amended to
25 read as follows:

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

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

30 (i) Unless another term of confinement applies, a sentence within
31 the standard sentence range established in RCW 9.94A.510 or
32 9.94A.517;

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

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

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

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

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

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

3 (viii) RCW 9.94A.655, relating to the parenting sentencing
4 alternative;

5 (ix) Section 1 of this act, relating to the mental health
6 sentencing alternative;

7 (x) RCW 9.94A.507, relating to certain sex offenses;

8 ~~((x))~~ (xi) RCW 9.94A.535, relating to exceptional sentences;

9 ~~((xi))~~ (xii) RCW 9.94A.589, relating to consecutive and
10 concurrent sentences;

11 ~~((xii))~~ (xiii) RCW 9.94A.603, relating to felony driving while
12 under the influence of intoxicating liquor or any drug and felony
13 physical control of a vehicle while under the influence of
14 intoxicating liquor or any drug;

15 ~~((xiii))~~ (xiv) RCW 9.94A.711, relating to the theft or taking
16 of a motor vehicle.

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

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

32 (4) If a sentence imposed includes payment of a legal financial
33 obligation, it shall be imposed as provided in RCW 9.94A.750,
34 9.94A.753, 9.94A.760, and 43.43.7541.

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

39 (6) The sentencing court shall give the offender credit for all
40 confinement time served before the sentencing if that confinement was

1 solely in regard to the offense for which the offender is being
2 sentenced.

3 (7) The sentencing court shall not give the offender credit for
4 any time the offender was required to comply with an electronic
5 monitoring program prior to sentencing if the offender was convicted
6 of one of the following offenses:

7 (a) A violent offense;

8 (b) Any sex offense;

9 (c) Any drug offense;

10 (d) Reckless burning in the first or second degree as defined in
11 RCW 9A.48.040 or 9A.48.050;

12 (e) Assault in the third degree as defined in RCW 9A.36.031;

13 (f) Assault of a child in the third degree;

14 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

15 (h) Harassment as defined in RCW 9A.46.020.

16 (8) The court shall order restitution as provided in RCW
17 9.94A.750 and 9.94A.753.

18 (9) As a part of any sentence, the court may impose and enforce
19 crime-related prohibitions and affirmative conditions as provided in
20 this chapter. "Crime-related prohibitions" may include a prohibition
21 on the use or possession of alcohol or controlled substances if the
22 court finds that any chemical dependency or substance abuse
23 contributed to the offense.

24 (10) In any sentence of partial confinement, the court may
25 require the offender to serve the partial confinement in work
26 release, in a program of home detention, on work crew, or in a
27 combined program of work crew and home detention.

28 **Sec. 4.** RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each
29 amended to read as follows:

30 (1) (a) An offender who violates any condition or requirement of a
31 sentence may be sanctioned by the court with up to sixty days'
32 confinement for each violation or by the department with up to thirty
33 days' confinement as provided in RCW 9.94A.737.

34 (b) In lieu of confinement, an offender may be sanctioned with
35 work release, home detention with electronic monitoring, work crew,
36 community restitution, inpatient treatment, daily reporting, curfew,
37 educational or counseling sessions, supervision enhanced through
38 electronic monitoring, or any other community-based sanctions.

1 (2) If an offender was under community custody pursuant to one of
2 the following statutes, the offender may be sanctioned as follows:

3 (a) If the offender was transferred to community custody in lieu
4 of earned early release in accordance with RCW 9.94A.728, the
5 offender may be transferred to a more restrictive confinement status
6 to serve up to the remaining portion of the sentence, less credit for
7 any period actually spent in community custody or in detention
8 awaiting disposition of an alleged violation.

9 (b) If the offender was sentenced under the drug offender
10 sentencing alternative set out in RCW 9.94A.660, the offender may be
11 sanctioned in accordance with that section.

12 (c) If the offender was sentenced under the parenting sentencing
13 alternative set out in RCW 9.94A.655, the offender may be sanctioned
14 in accordance with that section.

15 (d) If the offender was sentenced under the special sex offender
16 sentencing alternative set out in RCW 9.94A.670, the suspended
17 sentence may be revoked and the offender committed to serve the
18 original sentence of confinement.

19 (e) If the offender was sentenced under the mental health
20 sentencing alternative set out in section 1 of this act, the offender
21 may be sanctioned in accordance with that section.

22 (f) If the offender was sentenced to a work ethic camp pursuant
23 to RCW 9.94A.690, the offender may be reclassified to serve the
24 unexpired term of his or her sentence in total confinement.

25 (~~(f)~~) (g) If a sex offender was sentenced pursuant to RCW
26 9.94A.507, the offender may be transferred to a more restrictive
27 confinement status to serve up to the remaining portion of the
28 sentence, less credit for any period actually spent in community
29 custody or in detention awaiting disposition of an alleged violation.

30 (3) If a probationer is being supervised by the department
31 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may
32 be sanctioned pursuant to subsection (1) of this section. The
33 department shall have authority to issue a warrant for the arrest of
34 an offender who violates a condition of community custody, as
35 provided in RCW 9.94A.716. Any sanctions shall be imposed by the
36 department pursuant to RCW 9.94A.737. Nothing in this subsection is
37 intended to limit the power of the sentencing court to respond to a
38 probationer's violation of conditions.

1 (4) The parole or probation of an offender who is charged with a
2 new felony offense may be suspended and the offender placed in total
3 confinement pending disposition of the new criminal charges if:

4 (a) The offender is on parole pursuant to RCW 9.95.110(1); or

5 (b) The offender is being supervised pursuant to RCW 9.94A.745
6 and is on parole or probation pursuant to the laws of another state.

7 **Sec. 5.** RCW 9.94A.6332 and 2014 c 130 s 3 are each amended to
8 read as follows:

9 The procedure for imposing sanctions for violations of sentence
10 conditions or requirements is as follows:

11 (1) If the offender was sentenced under the drug offender
12 sentencing alternative, any sanctions shall be imposed by the
13 department or the court pursuant to RCW 9.94A.660.

14 (2) If the offender was sentenced under the special sex offender
15 sentencing alternative, any sanctions shall be imposed by the
16 department or the court pursuant to RCW 9.94A.670.

17 (3) If the offender was sentenced under the parenting sentencing
18 alternative, any sanctions shall be imposed by the department or by
19 the court pursuant to RCW 9.94A.655.

20 (4) If the offender was sentenced under the mental health
21 sentencing alternative, any sanctions shall be imposed by the
22 department or the court pursuant to section 1 of this act.

23 (5) If a sex offender was sentenced pursuant to RCW 9.94A.507,
24 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

25 ~~((5))~~ (6) If the offender was released pursuant to RCW
26 9.94A.730, any sanctions shall be imposed by the board pursuant to
27 RCW 9.95.435.

28 ~~((6))~~ (7) If the offender was sentenced pursuant to RCW
29 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the
30 board pursuant to RCW 9.95.435.

31 ~~((7))~~ (8) In any other case, if the offender is being
32 supervised by the department, any sanctions shall be imposed by the
33 department pursuant to RCW 9.94A.737. If a probationer is being
34 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
35 9.95.210, upon receipt of a violation hearing report from the
36 department, the court retains any authority that those statutes
37 provide to respond to a probationer's violation of conditions.

1 (~~(8)~~) (9) If the offender is not being supervised by the
2 department, any sanctions shall be imposed by the court pursuant to
3 RCW 9.94A.6333.

4 **Sec. 6.** RCW 9.94A.701 and 2010 c 267 s 11 and 2010 c 224 s 5 are
5 each reenacted and amended to read as follows:

6 (1) If an offender is sentenced to the custody of the department
7 for one of the following crimes, the court shall, in addition to the
8 other terms of the sentence, sentence the offender to community
9 custody for three years:

10 (a) A sex offense not sentenced under RCW 9.94A.507; or

11 (b) A serious violent offense.

12 (2) A court shall, in addition to the other terms of the
13 sentence, sentence an offender to community custody for eighteen
14 months when the court sentences the person to the custody of the
15 department for a violent offense that is not considered a serious
16 violent offense.

17 (3) A court shall, in addition to the other terms of the
18 sentence, sentence an offender to community custody for one year when
19 the court sentences the person to the custody of the department for:

20 (a) Any crime against persons under RCW 9.94A.411(2);

21 (b) An offense involving the unlawful possession of a firearm
22 under RCW 9.41.040, where the offender is a criminal street gang
23 member or associate;

24 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed
25 on or after July 1, 2000; or

26 (d) A felony violation of RCW 9A.44.132(1) (failure to register)
27 that is the offender's first violation for a felony failure to
28 register.

29 (4) If an offender is sentenced under the drug offender
30 sentencing alternative, the court shall impose community custody as
31 provided in RCW 9.94A.660.

32 (5) If an offender is sentenced under the special sex offender
33 sentencing alternative, the court shall impose community custody as
34 provided in RCW 9.94A.670.

35 (6) If an offender is sentenced to a work ethic camp, the court
36 shall impose community custody as provided in RCW 9.94A.690.

37 (7) If an offender is sentenced under the parenting sentencing
38 alternative, the court shall impose a term of community custody as
39 provided in RCW 9.94A.655.

1 (8) If the offender is sentenced under the mental health
2 sentencing alternative, the court shall impose a term of community
3 custody as provided in section 1 of this act.

4 (9) If a sex offender is sentenced as a nonpersistent offender
5 pursuant to RCW 9.94A.507, the court shall impose community custody
6 as provided in that section.

7 (~~(9)~~) (10) The term of community custody specified by this
8 section shall be reduced by the court whenever an offender's standard
9 range term of confinement in combination with the term of community
10 custody exceeds the statutory maximum for the crime as provided in
11 RCW 9A.20.021.

12 NEW SECTION. **Sec. 7.** This act applies to sentences imposed on
13 or after the effective date of this section.

14 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect July 20, 2021.

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