

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1371

52nd Legislature
1991 Regular Session

Passed by the House March 14, 1991
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1991
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1371** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

HOUSE BILL 1371

Passed Legislature - 1991 Regular Session

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Hargrove, Winsley, Prentice, Morris, Tate, Riley, Leonard, H. Myers, D. Sommers, Wynne, Moyer, Miller and May; by request of Department of Corrections.

Read first time January 28, 1991. Referred to Committee on Human Services.

1 AN ACT Relating to probationer assessments; and amending RCW
2 9.94A.270, 72.04A.120, and 9.94A.120.

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

4 **Sec. 1.** RCW 9.94A.270 and 1989 c 252 s 8 are each amended to read
5 as follows:

6 (1) Whenever a punishment imposed under this chapter requires
7 ((community)) supervision services to be provided, the ((sentencing
8 court shall require that the)) offender shall pay to the department of
9 corrections the monthly assessment, prescribed under subsection (2) of
10 this section, which shall be for the duration of the ((probation))
11 terms of supervision and which shall be considered as payment or part
12 payment of the cost of providing ((probation)) supervision to the
13 ((probationer)) offender. The ((court)) department may exempt or defer
14 a person from the payment of all or any part of the assessment based
15 upon any of the following factors:

1 (a) The offender has diligently attempted but has been unable to
2 obtain employment that provides the offender sufficient income to make
3 such payments.

4 (b) The offender is a student in a school, college, university, or
5 a course of vocational or technical training designed to fit the
6 student for gainful employment.

7 (c) The offender has an employment handicap, as determined by an
8 examination acceptable to or ordered by the ((court)) department.

9 (d) The offender's age prevents him from obtaining employment.

10 (e) The offender is responsible for the support of dependents and
11 the payment of the assessment constitutes an undue hardship on the
12 offender.

13 (f) Other extenuating circumstances as determined by the ((court))
14 department.

15 (2) The department of corrections shall adopt a rule prescribing
16 the amount of the assessment. The department may, if it finds it
17 appropriate, prescribe a schedule of assessments that shall vary in
18 accordance with the intensity or cost of the supervision. The
19 department may not prescribe any assessment that is less than ten
20 dollars nor more than fifty dollars.

21 (3) All amounts required to be paid under this section shall be
22 collected by the department of corrections and deposited by the
23 department in the dedicated fund established pursuant to RCW 72.11.040.

24 (4) This section shall not apply to probation services provided
25 under an interstate compact pursuant to chapter 9.95 RCW or to
26 probation services provided for persons placed on probation prior to
27 June 10, 1982.

28 **Sec. 2.** RCW 72.04A.120 and 1989 c 252 s 20 are each amended to
29 read as follows:

1 (1) Any person placed on parole shall be required to pay the
2 monthly assessment, prescribed under subsection (2) of this section,
3 which shall be for the duration of the parole and which shall be
4 considered as payment or part payment of the cost of providing parole
5 supervision to the parolee. The ((board)) department may exempt a
6 person from the payment of all or any part of the assessment based upon
7 any of the following factors:

8 (a) The offender has diligently attempted but has been unable to
9 obtain employment which provides the offender sufficient income to make
10 such payments.

11 (b) The offender is a student in a school, college, university, or
12 a course of vocational or technical training designed to fit the
13 student for gainful employment.

14 (c) The offender has an employment handicap, as determined by an
15 examination acceptable to or ordered by the ((board)) department.

16 (d) The offender's age prevents him from obtaining employment.

17 (e) The offender is responsible for the support of dependents and
18 the payment of the assessment constitutes an undue hardship on the
19 offender.

20 (f) Other extenuating circumstances as determined by the ((board))
21 department.

22 (2) The department of corrections shall adopt a rule prescribing
23 the amount of the assessment. The department may, if it finds it
24 appropriate, prescribe a schedule of assessments which shall vary in
25 accordance with the intensity or cost of the supervision. The
26 department may not prescribe any assessment which is less than ten
27 dollars nor more than fifty dollars.

28 (3) Payment of the assessed amount shall constitute a condition of
29 parole for purposes of the application of RCW 72.04A.090.

1 (4) All amounts required to be paid under this section shall be
2 collected by the department of corrections and deposited by the
3 department in the dedicated fund established pursuant to RCW 72.11.040.

4 (5) This section shall not apply to parole services provided under
5 an interstate compact pursuant to chapter 9.95 RCW or to parole
6 services provided for offenders paroled before June 10, 1982.

7 **Sec. 3.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read
8 as follows:

9 When a person is convicted of a felony, the court shall impose
10 punishment as provided in this section.

11 (1) Except as authorized in subsections (2), (5), and (7) of this
12 section, the court shall impose a sentence within the sentence range
13 for the offense.

14 (2) The court may impose a sentence outside the standard sentence
15 range for that offense if it finds, considering the purpose of this
16 chapter, that there are substantial and compelling reasons justifying
17 an exceptional sentence.

18 (3) Whenever a sentence outside the standard range is imposed, the
19 court shall set forth the reasons for its decision in written findings
20 of fact and conclusions of law. A sentence outside the standard range
21 shall be a determinate sentence.

22 (4) An offender convicted of the crime of murder in the first
23 degree shall be sentenced to a term of total confinement not less than
24 twenty years. An offender convicted of the crime of assault in the
25 first degree where the offender used force or means likely to result in
26 death or intended to kill the victim shall be sentenced to a term of
27 total confinement not less than five years. An offender convicted of
28 the crime of rape in the first degree shall be sentenced to a term of
29 total confinement not less than five years, and shall not be eligible

1 for furlough, work release or other authorized leave of absence from
2 the correctional facility during such minimum five-year term except for
3 the purpose of commitment to an inpatient treatment facility. The
4 foregoing minimum terms of total confinement are mandatory and shall
5 not be varied or modified as provided in subsection (2) of this
6 section.

7 (5) In sentencing a first-time offender the court may waive the
8 imposition of a sentence within the sentence range and impose a
9 sentence which may include up to ninety days of confinement in a
10 facility operated or utilized under contract by the county and a
11 requirement that the offender refrain from committing new offenses.
12 The sentence may also include up to two years of community supervision,
13 which, in addition to crime-related prohibitions, may include
14 requirements that the offender perform any one or more of the
15 following:

16 (a) Devote time to a specific employment or occupation;

17 (b) Undergo available outpatient treatment for up to two years, or
18 inpatient treatment not to exceed the standard range of confinement for
19 that offense;

20 (c) Pursue a prescribed, secular course of study or vocational
21 training;

22 (d) Remain within prescribed geographical boundaries and notify the
23 court or the community corrections officer prior to any change in the
24 offender's address or employment;

25 (e) Report as directed to the court and a community corrections
26 officer; or

27 (f) Pay all court-ordered legal financial obligations as provided
28 in RCW 9.94A.030 and/or perform community service work.

29 (6) If a sentence range has not been established for the
30 defendant's crime, the court shall impose a determinate sentence which

1 may include not more than one year of confinement, community service
2 work, a term of community supervision not to exceed one year, and/or
3 other legal financial obligations. The court may impose a sentence
4 which provides more than one year of confinement if the court finds,
5 considering the purpose of this chapter, that there are substantial and
6 compelling reasons justifying an exceptional sentence.

7 (7)(a)(i) When an offender is convicted of a sex offense other than
8 a violation of RCW 9A.44.050 or a sex offense that is also a serious
9 violent offense and has no prior convictions for a sex offense or any
10 other felony sex offenses in this or any other state, the sentencing
11 court, on its own motion or the motion of the state or the defendant,
12 may order an examination to determine whether the defendant is amenable
13 to treatment.

14 The report of the examination shall include at a minimum the
15 following: The defendant's version of the facts and the official
16 version of the facts, the defendant's offense history, an assessment of
17 problems in addition to alleged deviant behaviors, the offender's
18 social and employment situation, and other evaluation measures used.
19 The report shall set forth the sources of the evaluator's information.

20 The examiner shall assess and report regarding the defendant's
21 amenability to treatment and relative risk to the community. A
22 proposed treatment plan shall be provided and shall include, at a
23 minimum:

24 (A) Frequency and type of contact between offender and therapist;

25 (B) Specific issues to be addressed in the treatment and
26 description of planned treatment modalities;

27 (C) Monitoring plans, including any requirements regarding living
28 conditions, lifestyle requirements, and monitoring by family members
29 and others;

30 (D) Anticipated length of treatment; and

1 (E) Recommended crime-related prohibitions.

2 The court on its own motion may order, or on a motion by the state
3 shall order, a second examination regarding the offender's amenability
4 to treatment. The evaluator shall be selected by the party making the
5 motion. The defendant shall pay the cost of any second examination
6 ordered unless the court finds the defendant to be indigent in which
7 case the state shall pay the cost.

8 (ii) After receipt of the reports, the court shall consider whether
9 the offender and the community will benefit from use of this special
10 sexual offender sentencing alternative and consider the victim's
11 opinion whether the offender should receive a treatment disposition
12 under this subsection. If the court determines that this special sex
13 offender sentencing alternative is appropriate, the court shall then
14 impose a sentence within the sentence range. If this sentence is less
15 than eight years of confinement, the court may suspend the execution of
16 the sentence and impose the following conditions of suspension:

17 (A) The court shall place the defendant on community supervision
18 for the length of the suspended sentence or three years, whichever is
19 greater; and

20 (B) The court shall order treatment for any period up to three
21 years in duration. The court in its discretion shall order outpatient
22 sex offender treatment or inpatient sex offender treatment, if
23 available. A community mental health center may not be used for such
24 treatment unless it has an appropriate program designed for sex
25 offender treatment. The offender shall not change sex offender
26 treatment providers or treatment conditions without first notifying the
27 prosecutor, the community corrections officer, and the court, and shall
28 not change providers without court approval after a hearing if the
29 prosecutor or community corrections officer object to the change. In
30 addition, as conditions of the suspended sentence, the court may impose

1 other sentence conditions including up to six months of confinement,
2 not to exceed the sentence range of confinement for that offense,
3 crime-related prohibitions, and requirements that the offender perform
4 any one or more of the following:

5 (I) Devote time to a specific employment or occupation;

6 (II) Remain within prescribed geographical boundaries and notify
7 the court or the community corrections officer prior to any change in
8 the offender's address or employment;

9 (III) Report as directed to the court and a community corrections
10 officer;

11 (IV) Pay all court-ordered legal financial obligations as provided
12 in RCW 9.94A.030, perform community service work, or any combination
13 thereof; or

14 (V) Make recoupment to the victim for the cost of any counseling
15 required as a result of the offender's crime.

16 (iii) The sex offender therapist shall submit quarterly reports on
17 the defendant's progress in treatment to the court and the parties.
18 The report shall reference the treatment plan and include at a minimum
19 the following: Dates of attendance, defendant's compliance with
20 requirements, treatment activities, the defendant's relative progress
21 in treatment, and any other material as specified by the court at
22 sentencing.

23 (iv) At the time of sentencing, the court shall set a treatment
24 termination hearing for three months prior to the anticipated date for
25 completion of treatment. Prior to the treatment termination hearing,
26 the treatment professional and community corrections officer shall
27 submit written reports to the court and parties regarding the
28 defendant's compliance with treatment and monitoring requirements, and
29 recommendations regarding termination from treatment, including
30 proposed community supervision conditions. Either party may request

1 and the court may order another evaluation regarding the advisability
2 of termination from treatment. The defendant shall pay the cost of any
3 additional evaluation ordered unless the court finds the defendant to
4 be indigent in which case the state shall pay the cost. At the
5 treatment termination hearing the court may: (A) Modify conditions of
6 community supervision, and either (B) terminate treatment, or (C)
7 extend treatment for up to the remaining period of community
8 supervision.

9 (v) The court may revoke the suspended sentence at any time during
10 the period of community supervision and order execution of the sentence
11 if: (A) The defendant violates the conditions of the suspended
12 sentence, or (B) the court finds that the defendant is failing to make
13 satisfactory progress in treatment. All confinement time served during
14 the period of community supervision shall be credited to the offender
15 if the suspended sentence is revoked.

16 (vi) After July 1, 1991, examinations and treatment ordered
17 pursuant to this subsection shall only be conducted by sex offender
18 treatment providers certified by the department of health pursuant to
19 chapter 18.155 RCW.

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

25 (b) When an offender is convicted of any felony sex offense
26 committed before July 1, 1987, and is sentenced to a term of
27 confinement of more than one year but less than six years, the
28 sentencing court may, on its own motion or on the motion of the
29 offender or the state, order the offender committed for up to thirty
30 days to the custody of the secretary of social and health services for

1 evaluation and report to the court on the offender's amenability to
2 treatment at these facilities. If the secretary of social and health
3 services cannot begin the evaluation within thirty days of the court's
4 order of commitment, the offender shall be transferred to the state for
5 confinement pending an opportunity to be evaluated at the appropriate
6 facility. The court shall review the reports and may order that the
7 term of confinement imposed be served in the sexual offender treatment
8 program at the location determined by the secretary of social and
9 health services or the secretary's designee, only if the report
10 indicates that the offender is amenable to the treatment program
11 provided at these facilities. The offender shall be transferred to the
12 state pending placement in the treatment program. Any offender who has
13 escaped from the treatment program shall be referred back to the
14 sentencing court.

15 If the offender does not comply with the conditions of the
16 treatment program, the secretary of social and health services may
17 refer the matter to the sentencing court. The sentencing court shall
18 commit the offender to the department of corrections to serve the
19 balance of the term of confinement.

20 If the offender successfully completes the treatment program before
21 the expiration of the term of confinement, the court may convert the
22 balance of confinement to community supervision and may place
23 conditions on the offender including crime-related prohibitions and
24 requirements that the offender perform any one or more of the
25 following:

- 26 (i) Devote time to a specific employment or occupation;
- 27 (ii) Remain within prescribed geographical boundaries and notify
28 the court or the community corrections officer prior to any change in
29 the offender's address or employment;

1 (iii) Report as directed to the court and a community corrections
2 officer;

3 (iv) Undergo available outpatient treatment.

4 If the offender violates any of the terms of community supervision,
5 the court may order the offender to serve out the balance of the
6 community supervision term in confinement in the custody of the
7 department of corrections.

8 After June 30, 1993, this subsection (b) shall cease to have
9 effect.

10 (c) When an offender commits any felony sex offense on or after
11 July 1, 1987, and is sentenced to a term of confinement of more than
12 one year but less than six years, the sentencing court may, on its own
13 motion or on the motion of the offender or the state, request the
14 department of corrections to evaluate whether the offender is amenable
15 to treatment and the department may place the offender in a treatment
16 program within a correctional facility operated by the department.

17 Except for an offender who has been convicted of a violation of RCW
18 9A.44.040 or 9A.44.050, if the offender completes the treatment program
19 before the expiration of his term of confinement, the department of
20 corrections may request the court to convert the balance of confinement
21 to community supervision and to place conditions on the offender
22 including crime-related prohibitions and requirements that the offender
23 perform any one or more of the following:

24 (i) Devote time to a specific employment or occupation;

25 (ii) Remain within prescribed geographical boundaries and notify
26 the court or the community corrections officer prior to any change in
27 the offender's address or employment;

28 (iii) Report as directed to the court and a community corrections
29 officer;

30 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his community
2 supervision, the court may order the offender to serve out the balance
3 of his community supervision term in confinement in the custody of the
4 department of corrections.

5 Nothing in (c) of this subsection shall confer eligibility for such
6 programs for offenders convicted and sentenced for a sex offense
7 committed prior to July 1, 1987. This subsection (c) does not apply to
8 any crime committed after July 1, 1990.

9 (d) Offenders convicted and sentenced for a sex offense committed
10 prior to July 1, 1987, may, subject to available funds, request an
11 evaluation by the department of corrections to determine whether they
12 are amenable to treatment. If the offender is determined to be
13 amenable to treatment, the offender may request placement in a
14 treatment program within a correctional facility operated by the
15 department. Placement in such treatment program is subject to
16 available funds.

17 (8)(a) When a court sentences a person to a term of total
18 confinement to the custody of the department of corrections for an
19 offense categorized as a sex offense or a serious violent offense
20 committed after July 1, 1988, but before July 1, 1990, assault in the
21 second degree, any crime against a person where it is determined in
22 accordance with RCW 9.94A.125 that the defendant or an accomplice was
23 armed with a deadly weapon at the time of commission, or any felony
24 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
25 1988, the court shall in addition to the other terms of the sentence,
26 sentence the offender to a one-year term of community placement
27 beginning either upon completion of the term of confinement or at such
28 time as the offender is transferred to community custody in lieu of
29 earned early release in accordance with RCW 9.94A.150 (1) and (2).
30 When the court sentences an offender under this subsection to the

1 statutory maximum period of confinement then the community placement
2 portion of the sentence shall consist entirely of such community
3 custody to which the offender may become eligible, in accordance with
4 RCW 9.94A.150 (1) and (2). Any period of community custody actually
5 served shall be credited against the community placement portion of the
6 sentence.

7 (b) When a court sentences a person to a term of total confinement
8 to the custody of the department of corrections for an offense
9 categorized as a sex offense or serious violent offense committed on or
10 after July 1, 1990, the court shall in addition to other terms of the
11 sentence, sentence the offender to community placement for two years or
12 up to the period of earned early release awarded pursuant to RCW
13 9.94A.150 (1) and (2), whichever is longer. The community placement
14 shall begin either upon completion of the term of confinement or at
15 such time as the offender is transferred to community custody in lieu
16 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
17 When the court sentences an offender under this subsection to the
18 statutory maximum period of confinement then the community placement
19 portion of the sentence shall consist entirely of the community custody
20 to which the offender may become eligible, in accordance with RCW
21 9.94A.150 (1) and (2). Any period of community custody actually served
22 shall be credited against the community placement portion of the
23 sentence. Unless a condition is waived by the court, the terms of
24 community placement for offenders sentenced pursuant to this section
25 shall include the following conditions:

26 (i) The offender shall report to and be available for contact with
27 the assigned community corrections officer as directed;

28 (ii) The offender shall work at department of corrections-approved
29 education, employment, and/or community service;

1 (iii) The offender shall not consume controlled substances except
2 pursuant to lawfully issued prescriptions;

3 (iv) An offender in community custody shall not unlawfully possess
4 controlled substances; and

5 (v) The offender shall pay supervision fees as determined by the
6 department of corrections.

7 (c) The court may also order any of the following special
8 conditions:

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

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

13 (iii) The offender shall participate in crime-related treatment or
14 counseling services;

15 (iv) The offender shall not consume alcohol;

16 (v) The residence location and living arrangements of a sex
17 offender shall be subject to the prior approval of the department of
18 corrections; or

19 (vi) The offender shall comply with any crime-related prohibitions.

20 (d) Prior to transfer to, or during, community placement, any
21 conditions of community placement may be removed or modified so as not
22 to be more restrictive by the sentencing court, upon recommendation of
23 the department of corrections.

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

1 (10) If a sentence imposed includes payment of a legal financial
2 obligation, the sentence shall specify the total amount of the legal
3 financial obligation owed, and shall require the offender to pay a
4 specified monthly sum toward that legal financial obligation.
5 Restitution to victims shall be paid prior to any other payments of
6 monetary obligations. Any legal financial obligation that is imposed
7 by the court may be collected by the department, which shall deliver
8 the amount paid to the county clerk for credit. The offender's
9 compliance with payment of legal financial obligations shall be
10 supervised by the department. All monetary payments ordered shall be
11 paid no later than ten years after the last date of release from
12 confinement pursuant to a felony conviction or the date the sentence
13 was entered. Independent of the department, the party or entity to
14 whom the legal financial obligation is owed shall have the authority to
15 utilize any other remedies available to the party or entity to collect
16 the legal financial obligation. Nothing in this section makes the
17 department, the state, or any of its employees, agents, or other
18 persons acting on their behalf liable under any circumstances for the
19 payment of these legal financial obligations. If an order includes
20 restitution as one of the monetary assessments, the county clerk shall
21 make disbursements to victims named in the order.

22 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
23 court may not impose a sentence providing for a term of confinement or
24 community supervision or community placement which exceeds the
25 statutory maximum for the crime as provided in chapter 9A.20 RCW.

26 (12) All offenders sentenced to terms involving community
27 supervision, community service, community placement, or legal financial
28 obligation shall be under the supervision of the secretary of the
29 department of corrections or such person as the secretary may designate
30 and shall follow explicitly the instructions of the secretary including

1 reporting as directed to a community corrections officer, remaining
2 within prescribed geographical boundaries, ~~((and))~~ notifying the
3 community corrections officer of any change in the offender's address
4 or employment, and paying the supervision fee assessment.

5 (13) The sentencing court shall give the offender credit for all
6 confinement time served before the sentencing if that confinement was
7 solely in regard to the offense for which the offender is being
8 sentenced.

9 (14) A departure from the standards in RCW 9.94A.400 (1) and (2)
10 governing whether sentences are to be served consecutively or
11 concurrently is an exceptional sentence subject to the limitations in
12 subsections (2) and (3) of this section, and may be appealed by the
13 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

14 (15) The court shall order restitution whenever the offender is
15 convicted of a felony that results in injury to any person or damage to
16 or loss of property, whether the offender is sentenced to confinement
17 or placed under community supervision, unless extraordinary
18 circumstances exist that make restitution inappropriate in the court's
19 judgment. The court shall set forth the extraordinary circumstances in
20 the record if it does not order restitution.

21 (16) As a part of any sentence, the court may impose and enforce an
22 order that relates directly to the circumstances of the crime for which
23 the offender has been convicted, prohibiting the offender from having
24 any contact with other specified individuals or a specific class of
25 individuals for a period not to exceed the maximum allowable sentence
26 for the crime, regardless of the expiration of the offender's term of
27 community supervision or community placement.

28 (17) In any sentence of partial confinement, the court may require
29 the defendant to serve the partial confinement in work release or in a
30 program of home detention.

1 (18) All court-ordered legal financial obligations collected by the
2 department and remitted to the county clerk shall be credited and paid
3 where restitution is ordered. Restitution shall be paid prior to any
4 other payments of monetary obligations.