

SSB 6409 - S AMD 59

By Senators Hargrove, Brandland, Stevens

ADOPTED 02/09/2006

1 Strike everything after the enacting clause and insert the
2 following:

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

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

7 (a) "Alford plea" or "Newton plea" means a guilty plea in which an
8 offender refuses to admit the commission of a criminal act or protests
9 his or her innocence.

10 (b) "Sex offender treatment provider" or "treatment provider" means
11 a certified sex offender treatment provider or a certified affiliate
12 sex offender treatment provider as defined in RCW 18.155.020.

13 ~~((b))~~ (c) "Substantial bodily harm" means bodily injury that
14 involves a temporary but substantial disfigurement, or that causes a
15 temporary but substantial loss or impairment of the function of any
16 body part or organ, or that causes a fracture of any body part or
17 organ.

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

23 (2) An offender is eligible for the special sex offender sentencing
24 alternative if:

25 (a) The offender has been convicted of a sex offense other than a
26 violation of RCW 9A.44.050 or a sex offense that is also a serious
27 violent offense. An offender pleading guilty must voluntarily admit to
28 the commission of all the elements of the crime of conviction. An
29 offender who enters an Alford plea or Newton plea on a sex offense

1 shall not be eligible for the special sex offender sentencing
2 alternative;

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

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

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

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

14 (f) The offender's standard sentence range for the offense includes
15 the possibility of confinement for less than eleven years.

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

20 (a) The report of the examination shall include at a minimum the
21 following:

22 (i) The offender's version of the facts and the official version of
23 the facts;

24 (ii) The offender's offense history;

25 (iii) An assessment of problems in addition to alleged deviant
26 behaviors;

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

28 (v) Other evaluation measures used.

29 The report shall set forth the sources of the examiner's
30 information.

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

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

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

1 (iii) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members
3 and others;

4 (iv) Anticipated length of treatment; and

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

11 (c) The court on its own motion may order, or on a motion by the
12 state shall order, a second examination regarding the offender's
13 amenability to treatment. The examiner shall be selected by the party
14 making the motion. The offender shall pay the cost of any second
15 examination ordered unless the court finds the defendant to be indigent
16 in which case the state shall pay the cost.

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

1 (a) The court shall order the offender to serve a term of
2 confinement of up to twelve months or the maximum term within the
3 standard range, whichever is less. The court may order the offender to
4 serve a term of confinement greater than twelve months or the maximum
5 term within the standard range based on the presence of an aggravating
6 circumstance listed in RCW 9.94A.535(~~(+2)~~) (3). In no case shall the
7 term of confinement exceed the statutory maximum sentence for the
8 offense. The court may order the offender to serve all or part of his
9 or her term of confinement in partial confinement. An offender
10 sentenced to a term of confinement under this subsection is not
11 eligible for earned release under RCW 9.92.151 or 9.94A.728.

12 (b) The court shall place the offender on community custody for the
13 length of the suspended sentence, the length of the maximum term
14 imposed pursuant to RCW 9.94A.712, or three years, whichever is
15 greater, and require the offender to comply with any conditions imposed
16 by the department under RCW 9.94A.720.

17 (c) The court shall order treatment for any period up to five years
18 in duration. The court, in its discretion, shall order outpatient sex
19 offender treatment or inpatient sex offender treatment, if available.
20 A community mental health center may not be used for such treatment
21 unless it has an appropriate program designed for sex offender
22 treatment. The offender shall not change sex offender treatment
23 providers or treatment conditions without first notifying the
24 prosecutor, the community corrections officer, and the court. If any
25 party or the court objects to a proposed change, the offender shall not
26 change providers or conditions without court approval after a hearing.

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

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

34 (a) Crime-related prohibitions;

35 (b) Require the offender to devote time to a specific employment or
36 occupation;

37 (c) Require the offender to remain within prescribed geographical

1 boundaries and notify the court or the community corrections officer
2 prior to any change in the offender's address or employment;

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

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

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

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

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

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

20 (b) The court shall conduct a hearing on the offender's progress in
21 treatment at least once a year. At least fourteen days prior to the
22 hearing, notice of the hearing shall be given to the victim. The
23 victim shall be given the opportunity to make statements to the court
24 regarding the offender's supervision and treatment. At the hearing,
25 the court may modify conditions of community custody including, but not
26 limited to, crime-related prohibitions and affirmative conditions
27 relating to activities and behaviors identified as part of, or relating
28 to precursor activities and behaviors in, the offender's offense cycle
29 or revoke the suspended sentence.

30 (8) At least fourteen days prior to the treatment termination
31 hearing, notice of the hearing shall be given to the victim. The
32 victim shall be given the opportunity to make statements to the court
33 regarding the offender's supervision and treatment. Prior to the
34 treatment termination hearing, the treatment provider and community
35 corrections officer shall submit written reports to the court and
36 parties regarding the offender's compliance with treatment and
37 monitoring requirements, and recommendations regarding termination from
38 treatment, including proposed community custody conditions. The court

1 may order an evaluation regarding the advisability of termination from
2 treatment by a sex offender treatment provider who may not be the same
3 person who treated the offender under subsection (4) of this section or
4 any person who employs, is employed by, or shares profits with the
5 person who treated the offender under subsection (4) of this section
6 unless the court has entered written findings that such evaluation is
7 in the best interest of the victim and that a successful evaluation of
8 the offender would otherwise be impractical. The offender shall pay
9 the cost of the evaluation. At the treatment termination hearing the
10 court may: (a) Modify conditions of community custody, and either (b)
11 terminate treatment, or (c) extend treatment in two-year increments for
12 up to the remaining period of community custody.

13 (9)(a) If a violation of conditions other than a second violation
14 of the prohibitions or affirmative conditions relating to precursor
15 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
16 this section occurs during community custody, the department shall
17 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
18 the violation to the court and recommend revocation of the suspended
19 sentence as provided for in subsections (6) and (8) of this section.

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

26 (10) The court may revoke the suspended sentence at any time during
27 the period of community custody and order execution of the sentence if:
28 (a) The offender violates the conditions of the suspended sentence, or
29 (b) the court finds that the offender is failing to make satisfactory
30 progress in treatment. All confinement time served during the period
31 of community custody shall be credited to the offender if the suspended
32 sentence is revoked.

33 (11) The offender's sex offender treatment provider may not be the
34 same person who examined the offender under subsection (3) of this
35 section or any person who employs, is employed by, or shares profits
36 with the person who examined the offender under subsection (3) of this
37 section, unless the court has entered written findings that such
38 treatment is in the best interests of the victim and that successful

1 treatment of the offender would otherwise be impractical. Examinations
2 and treatment ordered pursuant to this subsection shall only be
3 conducted by certified sex offender treatment providers or certified
4 affiliate sex offender treatment providers under chapter 18.155 RCW
5 unless the court finds that:

6 (a) The offender has already moved to another state or plans to
7 move to another state for reasons other than circumventing the
8 certification requirements; or

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

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

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

17 **Sec. 2.** RCW 13.40.160 and 2004 c 120 s 4 and 2004 c 38 s 11 are
18 each reenacted and amended to read as follows:

19 (1) The standard range disposition for a juvenile adjudicated of an
20 offense is determined according to RCW 13.40.0357.

21 (a) When the court sentences an offender to a local sanction as
22 provided in RCW 13.40.0357 option A, the court shall impose a
23 determinate disposition within the standard ranges, except as provided
24 in subsection (2), (3), (4), (5), or (6) of this section. The
25 disposition may be comprised of one or more local sanctions.

26 (b) When the court sentences an offender to a standard range as
27 provided in RCW 13.40.0357 option A that includes a term of confinement
28 exceeding thirty days, commitment shall be to the department for the
29 standard range of confinement, except as provided in subsection (2),
30 (3), (4), (5), or (6) of this section.

31 (2) If the court concludes, and enters reasons for its conclusion,
32 that disposition within the standard range would effectuate a manifest
33 injustice the court shall impose a disposition outside the standard
34 range, as indicated in option D of RCW 13.40.0357. The court's finding
35 of manifest injustice shall be supported by clear and convincing
36 evidence.

1 A disposition outside the standard range shall be determinate and
2 shall be comprised of confinement or community supervision, or a
3 combination thereof. When a judge finds a manifest injustice and
4 imposes a sentence of confinement exceeding thirty days, the court
5 shall sentence the juvenile to a maximum term, and the provisions of
6 RCW 13.40.030(2) shall be used to determine the range. A disposition
7 outside the standard range is appealable under RCW 13.40.230 by the
8 state or the respondent. A disposition within the standard range is
9 not appealable under RCW 13.40.230.

10 (3) When a juvenile offender is found to have committed a sex
11 offense, other than a sex offense that is also a serious violent
12 offense as defined by RCW 9.94A.030, and has no history of a prior sex
13 offense, the court, on its own motion or the motion of the state or the
14 respondent, may order an examination to determine whether the
15 respondent is amenable to treatment.

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

23 The examiner shall assess and report regarding the respondent's
24 amenability to treatment and relative risk to the community. A
25 proposed treatment plan shall be provided and shall include, at a
26 minimum:

27 (a)(i) Frequency and type of contact between the offender and
28 therapist;

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

31 (iii) Monitoring plans, including any requirements regarding living
32 conditions, lifestyle requirements, and monitoring by family members,
33 legal guardians, or others;

34 (iv) Anticipated length of treatment; and

35 (v) Recommended crime-related prohibitions.

36 The court on its own motion may order, or on a motion by the state
37 shall order, a second examination regarding the offender's amenability
38 to treatment. The evaluator shall be selected by the party making the

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

4 After receipt of reports of the examination, the court shall then
5 consider whether the offender and the community will benefit from use
6 of this special sex offender disposition alternative and consider the
7 victim's opinion whether the offender should receive a treatment
8 disposition under this section. An offender pleading guilty must
9 voluntarily admit to the commission of all the elements of the crime of
10 conviction. An offender who enters an Alford plea or Newton plea on a
11 sex offense shall not be eligible for the special sex offender
12 sentencing alternative. If the court otherwise determines that this
13 special sex offender disposition alternative is appropriate, then the
14 court shall impose a determinate disposition within the standard range
15 for the offense, or if the court concludes, and enters reasons for its
16 conclusions, that such disposition would cause a manifest injustice,
17 the court shall impose a disposition under option D, and the court may
18 suspend the execution of the disposition and place the offender on
19 community supervision for at least two years. As a condition of the
20 suspended disposition, the court may impose the conditions of community
21 supervision and other conditions, including up to thirty days of
22 confinement and requirements that the offender do any one or more of
23 the following:

24 (b)(i) Devote time to a specific education, employment, or
25 occupation;

26 (ii) Undergo available outpatient sex offender treatment for up to
27 two years, or inpatient sex offender treatment not to exceed the
28 standard range of confinement for that offense. A community mental
29 health center may not be used for such treatment unless it has an
30 appropriate program designed for sex offender treatment. The
31 respondent shall not change sex offender treatment providers or
32 treatment conditions without first notifying the prosecutor, the
33 probation counselor, and the court, and shall not change providers
34 without court approval after a hearing if the prosecutor or probation
35 counselor object to the change;

36 (iii) Remain within prescribed geographical boundaries and notify
37 the court or the probation counselor prior to any change in the
38 offender's address, educational program, or employment;

1 (iv) Report to the prosecutor and the probation counselor prior to
2 any change in a sex offender treatment provider. This change shall
3 have prior approval by the court;

4 (v) Report as directed to the court and a probation counselor;

5 (vi) Pay all court-ordered legal financial obligations, perform
6 community restitution, or any combination thereof;

7 (vii) Make restitution to the victim for the cost of any counseling
8 reasonably related to the offense;

9 (viii) Comply with the conditions of any court-ordered probation
10 bond; or

11 (ix) The court shall order that the offender shall not attend the
12 public or approved private elementary, middle, or high school attended
13 by the victim or the victim's siblings. The parents or legal guardians
14 of the offender are responsible for transportation or other costs
15 associated with the offender's change of school that would otherwise be
16 paid by the school district. The court shall send notice of the
17 disposition and restriction on attending the same school as the victim
18 or victim's siblings to the public or approved private school the
19 juvenile will attend, if known, or if unknown, to the approved private
20 schools and the public school district board of directors of the
21 district in which the juvenile resides or intends to reside. This
22 notice must be sent at the earliest possible date but not later than
23 ten calendar days after entry of the disposition.

24 The sex offender treatment provider shall submit quarterly reports
25 on the respondent's progress in treatment to the court and the parties.
26 The reports shall reference the treatment plan and include at a minimum
27 the following: Dates of attendance, respondent's compliance with
28 requirements, treatment activities, the respondent's relative progress
29 in treatment, and any other material specified by the court at the time
30 of the disposition.

31 At the time of the disposition, the court may set treatment review
32 hearings as the court considers appropriate.

33 Except as provided in this subsection (3), after July 1, 1991,
34 examinations and treatment ordered pursuant to this subsection shall
35 only be conducted by certified sex offender treatment providers or
36 certified affiliate sex offender treatment providers under chapter
37 18.155 RCW. A sex offender therapist who examines or treats a juvenile
38 sex offender pursuant to this subsection does not have to be certified

1 by the department of health pursuant to chapter 18.155 RCW if the court
2 finds that: (A) The offender has already moved to another state or
3 plans to move to another state for reasons other than circumventing the
4 certification requirements; (B) no certified sex offender treatment
5 providers or certified affiliate sex offender treatment providers are
6 available for treatment within a reasonable geographical distance of
7 the offender's home; and (C) the evaluation and treatment plan comply
8 with this subsection (3) and the rules adopted by the department of
9 health.

10 If the offender violates any condition of the disposition or the
11 court finds that the respondent is failing to make satisfactory
12 progress in treatment, the court may revoke the suspension and order
13 execution of the disposition or the court may impose a penalty of up to
14 thirty days' confinement for violating conditions of the disposition.
15 The court may order both execution of the disposition and up to thirty
16 days' confinement for the violation of the conditions of the
17 disposition. The court shall give credit for any confinement time
18 previously served if that confinement was for the offense for which the
19 suspension is being revoked.

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

25 A disposition entered under this subsection (3) is not appealable
26 under RCW 13.40.230.

27 (4) If the juvenile offender is subject to a standard range
28 disposition of local sanctions or 15 to 36 weeks of confinement and has
29 not committed an A- or B+ offense, the court may impose the disposition
30 alternative under RCW 13.40.165.

31 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
32 confinement, the court may impose the disposition alternative under RCW
33 13.40.167.

34 (6) When the offender is subject to a standard range commitment of
35 15 to 36 weeks and is ineligible for a suspended disposition
36 alternative, a manifest injustice disposition below the standard range,
37 special sex offender disposition alternative, chemical dependency

1 disposition alternative, or mental health disposition alternative, the
2 court in a county with a pilot program under RCW 13.40.169 may impose
3 the disposition alternative under RCW 13.40.169.

4 (7) RCW 13.40.193 shall govern the disposition of any juvenile
5 adjudicated of possessing a firearm in violation of RCW
6 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
7 that the juvenile was armed with a firearm.

8 (8) Whenever a juvenile offender is entitled to credit for time
9 spent in detention prior to a dispositional order, the dispositional
10 order shall specifically state the number of days of credit for time
11 served.

12 (9) Except as provided under subsection (3), (4), (5), or (6) of
13 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the
14 court shall not suspend or defer the imposition or the execution of the
15 disposition.

16 (10) In no case shall the term of confinement imposed by the court
17 at disposition exceed that to which an adult could be subjected for the
18 same offense."

SSB 6409 - S AMD

By Senators Hargrove, Brandland, Stevens

ADOPTED 02/09/2006

19 On page 1, line 1 of the title, after "Relating to" strike the
20 remainder of the title and insert "prohibiting offenders who enter
21 Alford pleas or Newton pleas from receiving special sex offender
22 sentencing and disposition alternatives; reenacting and amending RCW
23 9.94A.670 and 13.40.160; and prescribing penalties."

--- END ---