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HOUSE BILL 2077

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Goodman, O'Brien, Kirby, Kagi, Roberts, and Chase

Read first time 02/09/09. Referred to Committee on Public Safety & Emergency Preparedness.

1            AN ACT Relating to delayed sentencing for offenders with a standard  
2 range under one year; amending RCW 9.94A.500; and adding a new section  
3 to chapter 9.94A RCW.

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

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

7            (1) An offender is eligible for the delayed sentencing option if:

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

11           (b) The offender is convicted of a felony that is not a felony  
12 driving while under the influence of intoxicating liquor or any drug  
13 under RCW 46.61.502(6) or felony physical control of a vehicle while  
14 under the influence of intoxicating liquor or any drug under RCW  
15 46.61.504(6);

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

1 (d) The offender has not been found by the United States attorney  
2 general to be subject to a deportation detainer or order and does not  
3 become subject to a deportation order during the period in which the  
4 court has jurisdiction for the current offense; and

5 (e) The standard sentence range for the current offense is one year  
6 or less and the offender would otherwise serve his or her sentence in  
7 a county jail.

8 (2) A motion for consideration of the delayed sentencing option  
9 under this section may be made by the court, the offender, or the  
10 prosecutor. If the court grants the motion, an offender may elect to  
11 participate in the delayed sentencing option under terms set by the  
12 court.

13 (3)(a) Upon an entry of a plea of guilty, if the court determines  
14 that a delayed sentence under this section is appropriate, the court  
15 shall continue the sentencing hearing for a period set by the court up  
16 to three hundred sixty-five days and order presentence release  
17 conditions pending sentencing.

18 (b) An offender must submit a chemical dependency, domestic  
19 violence, or mental health evaluation to the court at the time a guilty  
20 plea is entered in order to be considered for inpatient or outpatient  
21 treatment as a condition of the delayed sentencing option.

22 (c) At the discretion of the court, an offender may participate in  
23 the delayed sentencing option whether or not treatment is imposed as a  
24 condition of the delayed sentencing option.

25 (4) The delayed sentencing option shall include:

26 (a) Crime-related prohibitions including a condition not to use  
27 illegal controlled substances;

28 (b) A requirement to submit to urinalysis or other testing to  
29 monitor that status;

30 (c) A release of information signed by the offender authorizing any  
31 treatment provider to provide notice of noncompliance to the court,  
32 defense counsel, and the prosecutor;

33 (d) A requirement to remain within the county while sentencing is  
34 pending;

35 (e) A requirement to commit no criminal law violations;

36 (f) A requirement to report any change of address, employment, or  
37 phone number to the court, treatment provider, defense counsel, and  
38 prosecutor;

1 (g) Pay all court-ordered legal financial obligations;  
2 (h) Stay out of areas designated by the court; and  
3 (i) Other conditions as the court may require, such as affirmative  
4 conditions.

5 (5)(a) The delayed sentencing option may include a period of  
6 appropriate inpatient or outpatient substance abuse, domestic violence,  
7 or mental health treatment in a program that has been approved by the  
8 department of social and health services.

9 (b) The treatment provider must submit periodic status reports to  
10 the court, defense counsel, and the prosecutor relating to the  
11 offender's progress in treatment. The treatment provider must notify  
12 the court, defense counsel, and the prosecutor of any noncompliance by  
13 the offender within seventy-two hours.

14 (6)(a) The court may bring any offender subject to this section  
15 back into court at any time during the postconviction period pending  
16 sentencing on its own initiative to evaluate the offender's progress in  
17 treatment or to determine whether any violations of the conditions of  
18 the option have occurred.

19 (b) If the offender is brought back to court, the court may modify  
20 the terms of the disposition or impose sanctions under (c) of this  
21 subsection.

22 (c) The court may revoke the delayed sentencing option and sentence  
23 the offender to a term of total confinement within the standard range  
24 for the offender's current offense at any time during the  
25 postconviction period pending sentencing if the offender violates the  
26 conditions of the disposition or the offender is failing to make  
27 satisfactory progress in treatment.

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

31 (7) If an offender subject to this section is found by the United  
32 States attorney general to be subject to a deportation order, a hearing  
33 shall be held by the court unless waived by the offender, and, if the  
34 court finds that the offender is subject to a valid deportation order,  
35 may terminate the offender from the delayed sentencing option and  
36 immediately sentence the offender to a term of total confinement within  
37 the standard range for the offender's current offense.

1 (8)(a) An offender participating in the delayed sentencing option  
2 under this section shall be subject to all rules relating to earned  
3 release time with respect to any period served in postconviction  
4 treatment pursuant to this section.

5 (b) An offender ordered to participate in treatment pending  
6 sentencing under this section shall be given one day credit for each  
7 day of participation in inpatient and outpatient treatment.

8 (9) Costs of examinations and preparing treatment plans under this  
9 section may be paid, at the option of the county, from funds provided  
10 to the county from the criminal justice treatment account under RCW  
11 70.96A.350.

12 (10) A delayed sentence under this section does not constitute a  
13 suspended or deferred sentence under RCW 9.94A.575.

14 **Sec. 2.** RCW 9.94A.500 and 2008 c 231 s 2 are each amended to read  
15 as follows:

16 (1) Before imposing a sentence upon a defendant, the court shall  
17 conduct a sentencing hearing. Except as provided in section 1 of this  
18 act, the sentencing hearing shall be held within forty court days  
19 following conviction. Upon the motion of either party for good cause  
20 shown, or on its own motion, the court may extend the time period for  
21 conducting the sentencing hearing.

22 Except in cases where the defendant shall be sentenced to a term of  
23 total confinement for life without the possibility of release or, when  
24 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
25 first degree, sentenced to death, the court may order the department to  
26 complete a risk assessment report. If available before sentencing, the  
27 report shall be provided to the court.

28 Unless specifically waived by the court, the court shall order the  
29 department to complete a chemical dependency screening report before  
30 imposing a sentence upon a defendant who has been convicted of a  
31 violation of the uniform controlled substances act under chapter 69.50  
32 RCW, a criminal solicitation to commit such a violation under chapter  
33 9A.28 RCW, or any felony where the court finds that the offender has a  
34 chemical dependency that has contributed to his or her offense. In  
35 addition, the court shall, at the time of plea or conviction, order the  
36 department to complete a presentence report before imposing a sentence  
37 upon a defendant who has been convicted of a felony sexual offense.

1 The department of corrections shall give priority to presentence  
2 investigations for sexual offenders. If the court determines that the  
3 defendant may be a mentally ill person as defined in RCW 71.24.025,  
4 although the defendant has not established that at the time of the  
5 crime he or she lacked the capacity to commit the crime, was  
6 incompetent to commit the crime, or was insane at the time of the  
7 crime, the court shall order the department to complete a presentence  
8 report before imposing a sentence.

9 The court shall consider the risk assessment report and presentence  
10 reports, if any, including any victim impact statement and criminal  
11 history, and allow arguments from the prosecutor, the defense counsel,  
12 the offender, the victim, the survivor of the victim, or a  
13 representative of the victim or survivor, and an investigative law  
14 enforcement officer as to the sentence to be imposed.

15 A criminal history summary relating to the defendant from the  
16 prosecuting authority or from a state, federal, or foreign governmental  
17 agency shall be prima facie evidence of the existence and validity of  
18 the convictions listed therein. If the court is satisfied by a  
19 preponderance of the evidence that the defendant has a criminal  
20 history, the court shall specify the convictions it has found to exist.  
21 All of this information shall be part of the record. Copies of all  
22 risk assessment reports and presentence reports presented to the  
23 sentencing court and all written findings of facts and conclusions of  
24 law as to sentencing entered by the court shall be sent to the  
25 department by the clerk of the court at the conclusion of the  
26 sentencing and shall accompany the offender if the offender is  
27 committed to the custody of the department. Court clerks shall  
28 provide, without charge, certified copies of documents relating to  
29 criminal convictions requested by prosecuting attorneys.

30 (2) To prevent wrongful disclosure of information related to mental  
31 health services, as defined in RCW 71.05.445 and 71.34.345, a court may  
32 take only those steps necessary during a sentencing hearing or any  
33 hearing in which the department presents information related to mental  
34 health services to the court. The steps may be taken on motion of the  
35 defendant, the prosecuting attorney, or on the court's own motion. The  
36 court may seal the portion of the record relating to information  
37 relating to mental health services, exclude the public from the hearing  
38 during presentation or discussion of information relating to mental

1 health services, or grant other relief to achieve the result intended  
2 by this subsection, but nothing in this subsection shall be construed  
3 to prevent the subsequent release of information related to mental  
4 health services as authorized by RCW 71.05.445, 71.34.345, or  
5 72.09.585. Any person who otherwise is permitted to attend any hearing  
6 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the  
7 hearing solely because the department intends to disclose or discloses  
8 information related to mental health services.

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