
HOUSE BILL 2209

State of Washington 61st Legislature 2009 Regular Session

By Representatives Pearson, Hope, Orcutt, Ross, Schmick, and Bailey

Read first time 02/13/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to limiting special sex offender sentencing
2 alternatives to the immediate victim's family members; amending RCW
3 9.94A.670; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.670 and 2008 c 231 s 31 are each amended to read
6 as follows:

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

9 (a) "Family member" means a relative by blood, marriage, or
10 adoption, or a foster parent.

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

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

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

6 (2) An offender is eligible for the special sex offender sentencing
7 alternative if:

8 (a) The offender has been convicted of a sex offense other than a
9 violation of RCW 9A.44.050 or a sex offense that is also a serious
10 violent offense. If the conviction results from a guilty plea, the
11 offender must, as part of his or her plea of guilty, voluntarily and
12 affirmatively admit he or she committed all of the elements of the
13 crime to which the offender is pleading guilty. This alternative is
14 not available to offenders who plead guilty to the offense charged
15 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d
16 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

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

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

25 (e) The offender ~~((had an established relationship with, or
26 connection to, the victim such that the sole connection with the victim
27 was not the commission of the crime))~~ has not committed multiple acts
28 constituting sex offenses against the same victim, regardless of
29 whether the offender was subject to criminal charges for the acts;
30 ~~((and))~~

31 (f) The offender is the immediate victim's family member;

32 (g) The testimony of the immediate victim of the crime is material
33 to the case or necessary to the prosecution of the offender;

34 (h) The immediate victim refuses to cooperate in the investigation,
35 or is unwilling, unable, or unavailable to testify;

36 (i) The immediate victim or immediate victim's family agrees to the
37 sentence imposed under this section; and

1 (j) The offender's standard sentence range for the offense includes
2 the possibility of confinement for less than eleven years.

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

7 (a) The report of the examination shall include at a minimum the
8 following:

9 (i) The offender's version of the facts and the official version of
10 the facts;

11 (ii) The offender's offense history;

12 (iii) An assessment of problems in addition to alleged deviant
13 behaviors;

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

15 (v) Other evaluation measures used.

16 The report shall set forth the sources of the examiner's
17 information.

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

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

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

25 (iii) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (iv) Anticipated length of treatment; and

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

35 (c) The court on its own motion may order, or on a motion by the
36 state shall order, a second examination regarding the offender's
37 amenability to treatment. The examiner shall be selected by the party

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

4 (4) After receipt of the reports, the court shall consider whether
5 the offender and the community will benefit from use of this
6 alternative, consider whether the alternative is too lenient in light
7 of the extent and circumstances of the offense, consider whether the
8 offender has victims in addition to the victim of the offense, consider
9 whether the offender is amenable to treatment, consider the risk the
10 offender would present to the community, to the victim, or to persons
11 of similar age and circumstances as the victim, and consider the
12 victim's opinion whether the offender should receive a treatment
13 disposition under this section. The court shall give great weight to
14 the victim's opinion whether the offender should receive a treatment
15 disposition under this section. If the sentence imposed is contrary to
16 the victim's opinion, the court shall enter written findings stating
17 its reasons for imposing the treatment disposition. The fact that the
18 offender admits to his or her offense does not, by itself, constitute
19 amenability to treatment. If the court determines that this
20 alternative is appropriate, the court shall then impose a sentence or,
21 pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, a minimum term of sentence,
22 within the standard sentence range. If the sentence imposed is less
23 than eleven years of confinement, the court may suspend the execution
24 of the sentence as provided in this section.

25 (5) As conditions of the suspended sentence, the court must impose
26 the following:

27 (a) A term of confinement of up to twelve months or the maximum
28 term within the standard range, whichever is less. The court may order
29 the offender to serve a term of confinement greater than twelve months
30 or the maximum term within the standard range based on the presence of
31 an aggravating circumstance listed in RCW 9.94A.535(3). In no case
32 shall the term of confinement exceed the statutory maximum sentence for
33 the offense. The court may order the offender to serve all or part of
34 his or her term of confinement in partial confinement. An offender
35 sentenced to a term of confinement under this subsection is not
36 eligible for earned release under RCW 9.92.151 or 9.94A.728.

37 (b) A term of community custody equal to the length of the
38 suspended sentence, the length of the maximum term imposed pursuant to

1 RCW ((~~9.94A.712~~)) 9.94A.507, or three years, whichever is greater, and
2 require the offender to comply with any conditions imposed by the
3 department under RCW 9.94A.703.

4 (c) Treatment for any period up to five years in duration. The
5 court, in its discretion, shall order outpatient sex offender treatment
6 or inpatient sex offender treatment, if available. A community mental
7 health center may not be used for such treatment unless it has an
8 appropriate program designed for sex offender treatment. The offender
9 shall not change sex offender treatment providers or treatment
10 conditions without first notifying the prosecutor, the community
11 corrections officer, and the court. If any party or the court objects
12 to a proposed change, the offender shall not change providers or
13 conditions without court approval after a hearing.

14 (d) Specific prohibitions and affirmative conditions relating to
15 the known precursor activities or behaviors identified in the proposed
16 treatment plan under subsection (3)(b)(v) of this section or identified
17 in an annual review under subsection (8)(b) of this section.

18 (6) As conditions of the suspended sentence, the court may impose
19 one or more of the following:

20 (a) Crime-related prohibitions;

21 (b) Require the offender to devote time to a specific employment or
22 occupation;

23 (c) Require the offender to remain within prescribed geographical
24 boundaries and notify the court or the community corrections officer
25 prior to any change in the offender's address or employment;

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

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

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

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

33 (7) At the time of sentencing, the court shall set a treatment
34 termination hearing for three months prior to the anticipated date for
35 completion of treatment.

36 (8)(a) The sex offender treatment provider shall submit quarterly
37 reports on the offender's progress in treatment to the court and the
38 parties. The report shall reference the treatment plan and include at

1 a minimum the following: Dates of attendance, offender's compliance
2 with requirements, treatment activities, the offender's relative
3 progress in treatment, and any other material specified by the court at
4 sentencing.

5 (b) The court shall conduct a hearing on the offender's progress in
6 treatment at least once a year. At least fourteen days prior to the
7 hearing, notice of the hearing shall be given to the victim. The
8 victim shall be given the opportunity to make statements to the court
9 regarding the offender's supervision and treatment. At the hearing,
10 the court may modify conditions of community custody including, but not
11 limited to, crime-related prohibitions and affirmative conditions
12 relating to activities and behaviors identified as part of, or relating
13 to precursor activities and behaviors in, the offender's offense cycle
14 or revoke the suspended sentence.

15 (9) At least fourteen days prior to the treatment termination
16 hearing, notice of the hearing shall be given to the victim. The
17 victim shall be given the opportunity to make statements to the court
18 regarding the offender's supervision and treatment. Prior to the
19 treatment termination hearing, the treatment provider and community
20 corrections officer shall submit written reports to the court and
21 parties regarding the offender's compliance with treatment and
22 monitoring requirements, and recommendations regarding termination from
23 treatment, including proposed community custody conditions. The court
24 may order an evaluation regarding the advisability of termination from
25 treatment by a sex offender treatment provider who may not be the same
26 person who treated the offender under subsection (5) of this section or
27 any person who employs, is employed by, or shares profits with the
28 person who treated the offender under subsection (5) of this section
29 unless the court has entered written findings that such evaluation is
30 in the best interest of the victim and that a successful evaluation of
31 the offender would otherwise be impractical. The offender shall pay
32 the cost of the evaluation. At the treatment termination hearing the
33 court may: (a) Modify conditions of community custody, and either (b)
34 terminate treatment, or (c) extend treatment in two-year increments for
35 up to the remaining period of community custody.

36 (10)(a) If a violation of conditions other than a second violation
37 of the prohibitions or affirmative conditions relating to precursor
38 behaviors or activities imposed under subsection (5)(d) or (8)(b) of

1 this section occurs during community custody, the department shall
2 either impose sanctions as provided for in RCW 9.94A.633(1) or refer
3 the violation to the court and recommend revocation of the suspended
4 sentence as provided for in subsections (7) and (9) of this section.

5 (b) If a second violation of the prohibitions or affirmative
6 conditions relating to precursor behaviors or activities imposed under
7 subsection (5)(d) or (8)(b) of this section occurs during community
8 custody, the department shall refer the violation to the court and
9 recommend revocation of the suspended sentence as provided in
10 subsection (11) of this section.

11 (11) The court may revoke the suspended sentence at any time during
12 the period of community custody and order execution of the sentence if:

13 (a) The offender violates the conditions of the suspended sentence, or
14 (b) the court finds that the offender is failing to make satisfactory
15 progress in treatment. All confinement time served during the period
16 of community custody shall be credited to the offender if the suspended
17 sentence is revoked.

18 (12) If the offender violates a requirement of the sentence that is
19 not a condition of the suspended sentence pursuant to subsection (5) or
20 (6) of this section, the department may impose sanctions pursuant to
21 RCW 9.94A.633(1).

22 (13) The offender's sex offender treatment provider may not be the
23 same person who examined the offender under subsection (3) of this
24 section or any person who employs, is employed by, or shares profits
25 with the person who examined the offender under subsection (3) of this
26 section, unless the court has entered written findings that such
27 treatment is in the best interests of the victim and that successful
28 treatment of the offender would otherwise be impractical. Examinations
29 and treatment ordered pursuant to this subsection shall only be
30 conducted by certified sex offender treatment providers or certified
31 affiliate sex offender treatment providers under chapter 18.155 RCW
32 unless the court finds that:

33 (a) The offender has already moved to another state or plans to
34 move to another state for reasons other than circumventing the
35 certification requirements; or

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

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

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

6 NEW SECTION. **Sec. 2.** This act takes effect August 1, 2009.

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