

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1791

Chapter 389, Laws of 2009

61st Legislature
2009 Regular Session

COMMUNITY CUSTODY AND ALTERNATIVE SENTENCING

EFFECTIVE DATE: 05/07/09 - Except sections 1 and 3 through 5,
which become effective 08/01/09.

Passed by the House April 18, 2009
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 14, 2009
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2009, 2:19 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1791** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 8, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1791

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Human Services (originally sponsored by Representatives Dickerson, O'Brien, Hurst, Green, Dammeier, Morrell, Orwall, Walsh, and Wood; by request of Department of Corrections)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to clarifying certain community custody and drug
2 offender sentencing alternative sentencing provisions; amending RCW
3 9.94A.505 and 9.94A.660; reenacting and amending RCW 9.94A.660; adding
4 new sections to chapter 9.94A RCW; providing an effective date;
5 providing an expiration date; and declaring an emergency.

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

7 **Sec. 1.** RCW 9.94A.505 and 2009 c 28 s 6 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

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

5 (viii) RCW 9.94A.507, relating to certain sex offenses;

6 (ix) RCW 9.94A.535, relating to exceptional sentences;

7 (x) RCW 9.94A.589, relating to consecutive and concurrent
8 sentences;

9 (xi) RCW 9.94A.603, relating to felony driving while under the
10 influence of intoxicating liquor or any drug and felony physical
11 control of a vehicle while under the influence of intoxicating liquor
12 or any drug.

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

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

28 (4) If a sentence imposed includes payment of a legal financial
29 obligation, it shall be imposed as provided in RCW 9.94A.750,
30 9.94A.753, 9.94A.760, and 43.43.7541.

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

35 (6) The sentencing court shall give the offender credit for all
36 confinement time served before the sentencing if that confinement was
37 solely in regard to the offense for which the offender is being
38 sentenced.

1 (7) The court shall order restitution as provided in RCW 9.94A.750
2 and 9.94A.753.

3 (8) As a part of any sentence, the court may impose and enforce
4 crime-related prohibitions and affirmative conditions as provided in
5 this chapter.

6 (9) In any sentence of partial confinement, the court may require
7 the offender to serve the partial confinement in work release, in a
8 program of home detention, on work crew, or in a combined program of
9 work crew and home detention.

10 **Sec. 2.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are
11 each reenacted and amended to read as follows:

12 (1) An offender is eligible for the special drug offender
13 sentencing alternative if:

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

17 (b) The offender is convicted of a felony that is not a felony
18 driving while under the influence of intoxicating liquor or any drug
19 under RCW 46.61.502(6) or felony physical control of a vehicle while
20 under the influence of intoxicating liquor or any drug under RCW
21 46.61.504(6);

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

26 (d) For a violation of the Uniform Controlled Substances Act under
27 chapter 69.50 RCW or a criminal solicitation to commit such a violation
28 under chapter 9A.28 RCW, the offense involved only a small quantity of
29 the particular controlled substance as determined by the judge upon
30 consideration of such factors as the weight, purity, packaging, sale
31 price, and street value of the controlled substance;

32 (e) The offender has not been found by the United States attorney
33 general to be subject to a deportation detainer or order and does not
34 become subject to a deportation order during the period of the
35 sentence;

36 (f) The end of the standard sentence range for the current offense
37 is greater than one year; and

1 (g) The offender has not received a drug offender sentencing
2 alternative more than once in the prior ten years before the current
3 offense.

4 (2) A motion for a sentence under this section may be made by the
5 court, the offender, or the state. ~~((If the sentencing court
6 determines that the offender is eligible for this alternative, the
7 court may order an examination of the offender. The examination shall,
8 at a minimum, address the following issues:~~

9 ~~(a) Whether the offender suffers from drug addiction;~~

10 ~~(b) Whether the addiction is such that there is a probability that
11 criminal behavior will occur in the future;~~

12 ~~(c) Whether effective treatment for the offender's addiction is
13 available from a provider that has been licensed or certified by the
14 division of alcohol and substance abuse of the department of social and
15 health services; and~~

16 ~~(d) Whether the offender and the community will benefit from the
17 use of the alternative.~~

18 ~~(3) The examination report must contain:~~

19 ~~(a) Information on the issues required to be addressed in
20 subsection (2) of this section; and~~

21 ~~(b) A proposed treatment plan that must, at a minimum, contain:~~

22 ~~(i) A proposed treatment provider that has been licensed or
23 certified by the division of alcohol and substance abuse of the
24 department of social and health services;~~

25 ~~(ii) The recommended frequency and length of treatment, including
26 both residential chemical dependency treatment and treatment in the
27 community;~~

28 ~~(iii) A proposed monitoring plan, including any requirements
29 regarding living conditions, lifestyle requirements, and monitoring by
30 family members and others; and~~

31 ~~(iv) Recommended crime-related prohibitions and affirmative
32 conditions.~~

33 ~~(4) After receipt of the examination report,)) (3) If the
34 sentencing court determines that the offender is eligible for this
35 alternative and that a sentence under this section is appropriate, the
36 court shall waive imposition of a sentence within the standard sentence
37 range and impose a sentence consisting of either a prison-based
38 alternative under subsection ~~((+5)) (4) of this section or a~~~~

1 residential chemical dependency treatment-based alternative under
2 subsection ~~((+6))~~ (5) of this section. If the court is considering
3 the residential chemical dependency treatment-based alternative under
4 subsection (5) of this section, then the court may order an examination
5 of the offender as described in subsection (5) of this section. To
6 assist the court in making its determination, the court may order the
7 department to complete either or both a risk assessment report and a
8 chemical dependency screening report as provided in RCW 9.94A.500. The
9 residential chemical dependency treatment-based alternative is only
10 available if the midpoint of the standard range is twenty-four months
11 or less.

12 ~~((+5))~~ (4) The prison-based alternative shall include:

13 (a) A period of total confinement in a state facility for one-half
14 of the midpoint of the standard sentence range or twelve months,
15 whichever is greater. During incarceration in the state facility,
16 offenders sentenced under this subsection shall undergo a comprehensive
17 substance abuse assessment and receive, within available resources,
18 treatment services appropriate for the offender. The treatment
19 services shall be designed by the division of alcohol and substance
20 abuse of the department of social and health services, in cooperation
21 with the department of corrections;

22 (b) ~~((The remainder of))~~ One-half the midpoint of the standard
23 range as a term of community custody which must include appropriate
24 substance abuse treatment in a program that has been approved by the
25 division of alcohol and substance abuse of the department of social and
26 health services. If the department finds that conditions have been
27 willfully violated, the offender may be reclassified to serve the
28 remaining balance of the original sentence. An offender who fails to
29 complete the program or who is administratively terminated from the
30 program shall be reclassified to serve the unexpired term of his or her
31 sentence as ordered by the sentencing court;

32 (c) Crime-related prohibitions including a condition not to use
33 illegal controlled substances;

34 (d) A requirement to submit to urinalysis or other testing to
35 monitor that status; and

36 (e) A term of community custody pursuant to RCW 9.94A.715 to be
37 imposed upon failure to complete or administrative termination from the
38 special drug offender sentencing alternative program.

1 ~~((6))~~ (5)(a) If the court is considering imposing a sentence
2 under the residential chemical dependency treatment-based alternative
3 in this subsection, then the court may order an examination of the
4 offender by the department. The examination shall, at a minimum,
5 address the following issues:

6 (i) Whether the offender suffers from drug addiction;

7 (ii) Whether the addiction is such that there is a probability that
8 criminal behavior will occur in the future;

9 (iii) Whether effective treatment for the offender's addiction is
10 available from a provider that has been licensed or certified by the
11 division of alcohol and substance abuse of the department of social and
12 health services; and

13 (iv) Whether the offender and the community will benefit from the
14 use of the alternative.

15 (b) The examination report must also contain:

16 (i) A proposed monitoring plan, including any requirements
17 regarding living conditions, lifestyle requirements, and monitoring by
18 family members and others; and

19 (ii) Recommended crime-related prohibitions and affirmative
20 conditions.

21 (c) The residential chemical dependency treatment-based alternative
22 shall include:

23 ~~((a))~~ (i) A term of community custody equal to one-half of the
24 midpoint of the standard sentence range or two years, whichever is
25 greater, conditioned on the offender entering and remaining in
26 residential chemical dependency treatment certified under chapter
27 70.96A RCW for a period set by the court between three and six months.
28 If the court imposes a term of community custody, the department shall,
29 within available resources, make chemical dependency assessment and
30 treatment services available to the offender during the term of
31 community custody. The court shall impose, as conditions of community
32 custody, treatment and other conditions as proposed in the plan under
33 ~~(subsection (3))~~(b) of this ~~(section))~~ subsection. The department
34 may impose conditions and sanctions as authorized in RCW 9.94A.715 (2),
35 (3), (6), and (7), 9.94A.737, and 9.94A.740. If the court imposes a
36 sentence under this subsection, then the treatment provider will be
37 required to send the treatment plan to the court within thirty days of
38 the offender's arrival to the residential chemical dependency treatment

1 program. The court shall schedule a progress hearing during the period
2 of residential chemical dependency treatment, and schedule a treatment
3 termination hearing for three months before the expiration of the term
4 of community custody;

5 ~~((b))~~ (ii) Before the progress hearing and treatment termination
6 hearing, the treatment provider and the department shall submit written
7 reports to the court and parties regarding the offender's compliance
8 with treatment and monitoring requirements, and recommendations
9 regarding termination from treatment. At the hearing, the court may:

10 ~~((i))~~ (A) Authorize the department to terminate the offender's
11 community custody status on the expiration date determined under ~~((a)~~
12 ~~of this))~~ subsection (5)(c)(i) of this section; or

13 ~~((ii))~~ (B) Continue the hearing to a date before the expiration
14 date of community custody, with or without modifying the conditions of
15 community custody; or

16 ~~((iii))~~ (C) Impose a term of total confinement equal to one-half
17 the midpoint of the standard sentence range, followed by a term of
18 community custody under RCW 9.94A.715;

19 ~~((e))~~ (iii) If the court imposes a term of total confinement
20 under ~~((b)(iii))~~ (c)(ii) of this subsection, the department shall,
21 within available resources, make chemical dependency assessment and
22 treatment services available to the offender during the terms of total
23 confinement and community custody.

24 ~~((7))~~ (6) If the court imposes a sentence under this section, the
25 court may prohibit the offender from using alcohol or controlled
26 substances and may require that the monitoring for controlled
27 substances be conducted by the department or by a treatment
28 alternatives to street crime program or a comparable court or agency-
29 referred program. The offender may be required to pay thirty dollars
30 per month while on community custody to offset the cost of monitoring.
31 In addition, the court may impose any of the following conditions:

32 (a) Devote time to a specific employment or training;

33 (b) Remain within prescribed geographical boundaries and notify the
34 court or the community corrections officer before any change in the
35 offender's address or employment;

36 (c) Report as directed to a community corrections officer;

37 (d) Pay all court-ordered legal financial obligations;

38 (e) Perform community restitution work;

1 (f) Stay out of areas designated by the sentencing court;

2 (g) Such other conditions as the court may require such as
3 affirmative conditions.

4 ~~((+8))~~ (7)(a) The court may bring any offender sentenced under
5 this section back into court at any time on its own initiative to
6 evaluate the offender's progress in treatment or to determine if any
7 violations of the conditions of the sentence have occurred.

8 (b) If the offender is brought back to court, the court may modify
9 the terms of the community custody or impose sanctions under (c) of
10 this subsection.

11 (c) The court may order the offender to serve a term of total
12 confinement within the standard range of the offender's current offense
13 at any time during the period of community custody if the offender
14 violates the conditions of the sentence or if the offender is failing
15 to make satisfactory progress in treatment.

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

19 ~~((+9))~~ (8) If an offender sentenced to the prison-based
20 alternative under subsection ~~((+5))~~ (4) of this section is found by
21 the United States attorney general to be subject to a deportation
22 order, a hearing shall be held by the department unless waived by the
23 offender, and, if the department finds that the offender is subject to
24 a valid deportation order, the department may administratively
25 terminate the offender from the program and reclassify the offender to
26 serve the remaining balance of the original sentence.

27 ~~((+10))~~ (9) An offender sentenced under this section shall be
28 subject to all rules relating to earned release time with respect to
29 any period served in total confinement.

30 ~~((+11))~~ (10) Costs of examinations and preparing treatment plans
31 under ~~((subsections (2) and (3) of))~~ this section may be paid, at the
32 option of the county, from funds provided to the county from the
33 criminal justice treatment account under RCW 70.96A.350.

34 **Sec. 3.** RCW 9.94A.660 and 2008 c 231 s 30 are each amended to read
35 as follows:

36 (1) An offender is eligible for the special drug offender
37 sentencing alternative if:

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

4 (b) The offender is convicted of a felony that is not a felony
5 driving while under the influence of intoxicating liquor or any drug
6 under RCW 46.61.502(6) or felony physical control of a vehicle while
7 under the influence of intoxicating liquor or any drug under RCW
8 46.61.504(6);

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

13 (d) For a violation of the Uniform Controlled Substances Act under
14 chapter 69.50 RCW or a criminal solicitation to commit such a violation
15 under chapter 9A.28 RCW, the offense involved only a small quantity of
16 the particular controlled substance as determined by the judge upon
17 consideration of such factors as the weight, purity, packaging, sale
18 price, and street value of the controlled substance;

19 (e) The offender has not been found by the United States attorney
20 general to be subject to a deportation detainer or order and does not
21 become subject to a deportation order during the period of the
22 sentence;

23 (f) The end of the standard sentence range for the current offense
24 is greater than one year; and

25 (g) The offender has not received a drug offender sentencing
26 alternative more than once in the prior ten years before the current
27 offense.

28 (2) A motion for a (~~sentence under this section~~) special drug
29 offender sentencing alternative may be made by the court, the offender,
30 or the state.

31 (3) If the sentencing court determines that the offender is
32 eligible for (~~this~~) an alternative sentence under this section and
33 that the alternative sentence is appropriate, the court shall waive
34 imposition of a sentence within the standard sentence range and impose
35 a sentence consisting of either a prison-based alternative under
36 section 4 of this act or a residential chemical dependency treatment-
37 based alternative under section 5 of this act. The residential

1 chemical dependency treatment-based alternative is only available if
2 the midpoint of the standard range is twenty-four months or less.

3 (4) To assist the court in making its determination, the court may
4 order the department to complete either or both a risk assessment
5 report and a chemical dependency screening report as provided in RCW
6 9.94A.500.

7 (5)(a) If the court is considering imposing a sentence under the
8 residential chemical dependency treatment-based alternative, the court
9 may order an examination of the offender by the department. The
10 examination shall, at a minimum, address the following issues:

11 ~~((a))~~ (i) Whether the offender suffers from drug addiction;

12 ~~((b))~~ (ii) Whether the addiction is such that there is a
13 probability that criminal behavior will occur in the future;

14 ~~((c))~~ (iii) Whether effective treatment for the offender's
15 addiction is available from a provider that has been licensed or
16 certified by the division of alcohol and substance abuse of the
17 department of social and health services; and

18 ~~((d))~~ (iv) Whether the offender and the community will benefit
19 from the use of the alternative.

20 ~~((3))~~ (b) The examination report must contain:

21 ~~((a) - Information on the issues required to be addressed in~~
22 ~~subsection (2) of this section; and~~

23 ~~(b) A proposed treatment plan that must, at a minimum, contain:~~

24 ~~(i) A proposed treatment provider that has been licensed or~~
25 ~~certified by the division of alcohol and substance abuse of the~~
26 ~~department of social and health services;~~

27 ~~(ii) The recommended frequency and length of treatment, including~~
28 ~~both residential chemical dependency treatment and treatment in the~~
29 ~~community;~~

30 ~~(iii))~~ (i) A proposed monitoring plan, including any requirements
31 regarding living conditions, lifestyle requirements, and monitoring by
32 family members and others; and

33 ~~((iv))~~ (ii) Recommended crime-related prohibitions and
34 affirmative conditions.

35 ~~((4) - After receipt of the examination report, if the court~~
36 ~~determines that a sentence under this section is appropriate, the court~~
37 ~~shall waive imposition of a sentence within the standard sentence range~~
38 ~~and impose a sentence consisting of either a prison based alternative~~

~~1 under subsection (5) of this section or a residential chemical
2 dependency treatment based alternative under subsection (6) of this
3 section.—The residential chemical dependency treatment based
4 alternative is only available if the midpoint of the standard range is
5 twenty four months or less.~~

~~6 (5) The prison based alternative shall include:~~

~~7 (a) A period of total confinement in a state facility for one half
8 of the midpoint of the standard sentence range or twelve months,
9 whichever is greater.—During incarceration in the state facility,
10 offenders sentenced under this subsection shall undergo a comprehensive
11 substance abuse assessment and receive, within available resources,
12 treatment services appropriate for the offender.—The treatment
13 services shall be designed by the division of alcohol and substance
14 abuse of the department of social and health services, in cooperation
15 with the department of corrections;~~

~~16 (b) The remainder of the midpoint of the standard range as a term
17 of community custody which must include appropriate substance abuse
18 treatment in a program that has been approved by the division of
19 alcohol and substance abuse of the department of social and health
20 services.—If the department finds that conditions of community custody
21 have been willfully violated, the offender may be reclassified to serve
22 the remaining balance of the original sentence.—An offender who fails
23 to complete the program or who is administratively terminated from the
24 program shall be reclassified to serve the unexpired term of his or her
25 sentence as ordered by the sentencing court;~~

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

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

~~30 (e) A term of community custody pursuant to RCW 9.94A.701 to be
31 imposed upon failure to complete or administrative termination from the
32 special drug offender sentencing alternative program.~~

~~33 (6) The residential chemical dependency treatment based alternative
34 shall include:~~

~~35 (a) A term of community custody equal to one half of the midpoint
36 of the standard sentence range or two years, whichever is greater,
37 conditioned on the offender entering and remaining in residential
38 chemical dependency treatment certified under chapter 70.96A RCW for a~~

1 ~~period set by the court between three and six months. If the court~~
2 ~~imposes a term of community custody, the department shall, within~~
3 ~~available resources, make chemical dependency assessment and treatment~~
4 ~~services available to the offender during the term of community~~
5 ~~custody. The court shall impose, as conditions of community custody,~~
6 ~~treatment and other conditions as proposed in the plan under subsection~~
7 ~~(3)(b) of this section. The court shall schedule a progress hearing~~
8 ~~during the period of residential chemical dependency treatment, and~~
9 ~~schedule a treatment termination hearing for three months before the~~
10 ~~expiration of the term of community custody;~~

11 ~~(b) Before the progress hearing and treatment termination hearing,~~
12 ~~the treatment provider and the department shall submit written reports~~
13 ~~to the court and parties regarding the offender's compliance with~~
14 ~~treatment and monitoring requirements, and recommendations regarding~~
15 ~~termination from treatment. At the hearing, the court may:~~

16 ~~(i) Authorize the department to terminate the offender's community~~
17 ~~custody status on the expiration date determined under (a) of this~~
18 ~~subsection; or~~

19 ~~(ii) Continue the hearing to a date before the expiration date of~~
20 ~~community custody, with or without modifying the conditions of~~
21 ~~community custody; or~~

22 ~~(iii) Impose a term of total confinement equal to one half the~~
23 ~~midpoint of the standard sentence range, followed by a term of~~
24 ~~community custody under RCW 9.94A.701;~~

25 ~~(c) If the court imposes a term of total confinement under (b)(iii)~~
26 ~~of this subsection, the department shall, within available resources,~~
27 ~~make chemical dependency assessment and treatment services available to~~
28 ~~the offender during the terms of total confinement and community~~
29 ~~custody.~~

30 ~~(7) The))~~ (6) When a court imposes a sentence of community custody
31 under this section:

32 (a) The court may impose conditions as provided in RCW 9.94A.703
33 and may impose other affirmative conditions as the court considers
34 appropriate. In addition, an offender may be required to pay thirty
35 dollars per month while on community custody to offset the cost of
36 monitoring for alcohol or controlled substances.

37 ~~((8) The court may impose any of the following conditions:~~

38 ~~(a) Pay all court ordered legal financial obligations; or~~

1 ~~(b) Perform community restitution work.~~

2 ~~(9)(a))~~ (b) The department may impose conditions and sanctions as
3 authorized in RCW 9.94A.704 and RCW 9.94A.737.

4 (7)(a) The court may bring any offender sentenced under this
5 section back into court at any time on its own initiative to evaluate
6 the offender's progress in treatment or to determine if any violations
7 of the conditions of the sentence have occurred.

8 (b) If the offender is brought back to court, the court may modify
9 the conditions of the community custody or impose sanctions under (c)
10 of this subsection.

11 (c) The court may order the offender to serve a term of total
12 confinement within the standard range of the offender's current offense
13 at any time during the period of community custody if the offender
14 violates the conditions or requirements of the sentence or if the
15 offender is failing to make satisfactory progress in treatment.

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

19 ~~((10))~~ (8) In serving a term of community custody imposed upon
20 failure to complete, or administrative termination from, the special
21 drug offender sentencing alternative program, the offender shall
22 receive no credit for time served in community custody prior to
23 termination of the offender's participation in the program.

24 ~~((11) If an offender sentenced to the prison based alternative~~
25 ~~under subsection (5) of this section is found by the United States~~
26 ~~attorney general to be subject to a deportation order, a hearing shall~~
27 ~~be held by the department unless waived by the offender, and, if the~~
28 ~~department finds that the offender is subject to a valid deportation~~
29 ~~order, the department may administratively terminate the offender from~~
30 ~~the program and reclassify the offender to serve the remaining balance~~
31 ~~of the original sentence.~~

32 ~~(12))~~ (9) An offender sentenced under this section shall be
33 subject to all rules relating to earned release time with respect to
34 any period served in total confinement.

35 ~~((13))~~ (10) Costs of examinations and preparing treatment plans
36 under ~~((subsections (2) and (3) of this section))~~ a special drug
37 offender sentencing alternative may be paid, at the option of the

1 county, from funds provided to the county from the criminal justice
2 treatment account under RCW 70.96A.350.

3 NEW SECTION. **Sec. 4.** (1) A sentence for a prison-based special
4 drug offender sentencing alternative shall include:

5 (a) A period of total confinement in a state facility for one-half
6 the midpoint of the standard sentence range or twelve months, whichever
7 is greater;

8 (b) One-half the midpoint of the standard sentence range as a term
9 of community custody, which must include appropriate substance abuse
10 treatment in a program that has been approved by the division of
11 alcohol and substance abuse of the department of social and health
12 services;

13 (c) Crime-related prohibitions, including a condition not to use
14 illegal controlled substances;

15 (d) A requirement to submit to urinalysis or other testing to
16 monitor that status; and

17 (e) A term of community custody pursuant to RCW 9.94A.701 to be
18 imposed upon the failure to complete or administrative termination from
19 the special drug offender sentencing alternative program.

20 (2) During incarceration in the state facility, offenders sentenced
21 under this section shall undergo a comprehensive substance abuse
22 assessment and receive, within available resources, treatment services
23 appropriate for the offender. The treatment services shall be designed
24 by the division of alcohol and substance abuse of the department of
25 social and health services, in cooperation with the department of
26 corrections.

27 (3) If the department finds that conditions of community custody
28 have been willfully violated, the offender may be reclassified to serve
29 the remaining balance of the original sentence. An offender who fails
30 to complete the program or who is administratively terminated from the
31 program shall be reclassified to serve the unexpired term of his or her
32 sentence as ordered by the sentencing court.

33 (4) If an offender sentenced to the prison-based alternative under
34 this section is found by the United States attorney general to be
35 subject to a deportation order, a hearing shall be held by the
36 department unless waived by the offender, and, if the department finds
37 that the offender is subject to a valid deportation order, the

1 department may administratively terminate the offender from the program
2 and reclassify the offender to serve the remaining balance of the
3 original sentence.

4 NEW SECTION. **Sec. 5.** (1) A sentence for a residential chemical
5 dependency treatment-based alternative shall include a term of
6 community custody equal to one-half the midpoint of the standard
7 sentence range or two years, whichever is greater, conditioned on the
8 offender entering and remaining in residential chemical dependency
9 treatment certified under chapter 70.96A RCW for a period set by the
10 court between three and six months.

11 (2)(a) The court shall impose, as conditions of community custody,
12 treatment and other conditions as proposed in the examination report
13 completed pursuant to RCW 9.94A.660.

14 (b) If the court imposes a term of community custody, the
15 department shall, within available resources, make chemical dependency
16 assessment and treatment services available to the offender during the
17 term of community custody.

18 (3)(a) If the court imposes a sentence under this section, the
19 treatment provider must send the treatment plan to the court within
20 thirty days of the offender's arrival to the residential chemical
21 dependency treatment program.

22 (b) Upon receipt of the plan, the court shall schedule a progress
23 hearing during the period of residential chemical dependency treatment,
24 and schedule a treatment termination hearing for three months before
25 the expiration of the term of community custody;

26 (c) Before the progress hearing and treatment termination hearing,
27 the treatment provider and the department shall submit written reports
28 to the court and parties regarding the offender's compliance with
29 treatment and monitoring requirements, and recommendations regarding
30 termination from treatment.

31 (4) At a progress hearing or treatment termination hearing, the
32 court may:

33 (a) Authorize the department to terminate the offender's community
34 custody status on the expiration date determined under subsection (1)
35 of this section;

36 (b) Continue the hearing to a date before the expiration date of

1 community custody, with or without modifying the conditions of
2 community custody; or

3 (c) Impose a term of total confinement equal to one-half the
4 midpoint of the standard sentence range, followed by a term of
5 community custody under RCW 9.94A.701.

6 (5) If the court imposes a term of total confinement, the
7 department shall, within available resources, make chemical dependency
8 assessment and treatment services available to the offender during the
9 term of total confinement and subsequent term of community custody.

10 NEW SECTION. **Sec. 6.** Sections 4 and 5 of this act are each added
11 to chapter 9.94A RCW.

12 NEW SECTION. **Sec. 7.** Section 2 of this act is necessary for the
13 immediate preservation of the public peace, health, or safety, or
14 support of the state government and its existing public institutions,
15 and takes effect immediately.

16 NEW SECTION. **Sec. 8.** Sections 1 and 3 through 5 of this act take
17 effect August 1, 2009.

18 NEW SECTION. **Sec. 9.** Section 2 of this act expires August 1,
19 2009.

Passed by the House April 18, 2009.

Passed by the Senate April 14, 2009.

Approved by the Governor May 7, 2009.

Filed in Office of Secretary of State May 8, 2009.