
HOUSE BILL 2334

State of Washington

66th Legislature

2020 Regular Session

By Representatives Davis, Macri, Wylie, Goodman, and Appleton

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1 AN ACT Relating to drug offender sentencing; amending RCW
2 9.94A.662; reenacting and amending RCW 9.94A.660 and 9.94A.664; and
3 providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.660 and 2019 c 325 s 5002 and 2019 c 263 s 502
6 are each reenacted and amended to read as follows:

7 (1) An offender is eligible for the special drug offender
8 sentencing alternative if:

9 (a) The offender is convicted of a felony that is not a violent
10 offense (~~(or sex offense)~~) and the violation does not involve a
11 sentence enhancement under RCW 9.94A.533 (3) (~~(or)~~), (4), or (13);

12 (b) The offender is convicted of a felony that is not a felony
13 driving while under the influence of intoxicating liquor or any drug
14 under RCW 46.61.502(6) or felony physical control of a vehicle while
15 under the influence of intoxicating liquor or any drug under RCW
16 46.61.504(6);

17 (c) The offender has no current or prior convictions for a sex
18 offense (~~(at any time or)~~) in this state, another state, or the
19 United States for which the offender is currently or may be required
20 to register pursuant to RCW 9A.44.130;

1 (d) The offender has no prior convictions in this state, another
2 state, or the United States for:

3 (i) Robbery in the second degree that did not involve the use of
4 a firearm and was not reduced from robbery in the first degree within
5 seven years before conviction of the current offense; or

6 (ii) Any other violent offense within ten years before conviction
7 of the current offense (~~(, in this state, another state, or the United~~
8 ~~States));~~

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

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

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

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

25 (2) A motion for a special drug offender sentencing alternative
26 may be made by the court, the offender, or the state.

27 (3) If the sentencing court determines that the offender is
28 eligible for an alternative sentence under this section and that the
29 alternative sentence is appropriate, the court shall waive imposition
30 of a sentence within the standard sentence range and impose a
31 sentence consisting of either a prison-based alternative under RCW
32 9.94A.662 or a residential substance use disorder treatment-based
33 alternative under RCW 9.94A.664. The residential substance use
34 disorder treatment-based alternative is only available if the
35 midpoint of the standard range is ~~((twenty-four))~~ twenty-six months
36 or less.

37 (4) (a) To assist the court in making its determination, the court
38 may order the department to complete either or both a risk assessment
39 report and a substance use disorder screening report as provided in
40 RCW 9.94A.500.

1 (b) To assist the court in making its determination in domestic
2 violence cases, the court shall order the department to complete a
3 presentence investigation and a chemical dependency screening report
4 as provided in RCW 9.94A.500, unless otherwise specifically waived by
5 the court.

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

11 ~~((i))~~ (a) Whether the offender suffers from ~~((drug addiction))~~
12 a substance use disorder;

13 ~~((ii))~~ (b) Whether the ~~((addiction))~~ substance use disorder is
14 such that there is a probability that criminal behavior will occur in
15 the future;

16 ~~((iii))~~ (c) Whether effective treatment for the offender's
17 ~~((addiction))~~ substance use disorder is available from a provider
18 that has been licensed or certified by the department of health, and
19 where applicable, whether effective domestic violence perpetrator
20 treatment is available from a state-certified domestic violence
21 treatment provider pursuant to chapter 26.50 RCW; and

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

24 ~~((b) The examination report must contain:~~

25 ~~(i) A proposed monitoring plan, including any requirements~~
26 ~~regarding living conditions, lifestyle requirements, and monitoring~~
27 ~~by family members and others; and~~

28 ~~(ii) Recommended crime-related prohibitions and affirmative~~
29 ~~conditions.))~~

30 (6) When a court imposes a sentence of community custody under
31 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, or in cases of
37 domestic violence for monitoring with global positioning system
38 technology for compliance with a no-contact order.

39 (b) The department may impose conditions and sanctions as
40 authorized in RCW 9.94A.704 and 9.94A.737.

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

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

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

14 (d) An offender ordered to serve a term of total confinement
15 under (c) of this subsection shall receive credit for ~~((any))~~ time
16 previously served in total confinement and inpatient treatment under
17 this section, and shall receive fifty percent credit for time
18 previously served in community custody under this section.

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

24 (9) An offender sentenced under this section shall be subject to
25 all rules relating to earned release time with respect to any period
26 served in total confinement.

27 (10) Costs of examinations and preparing ~~((treatment))~~ the
28 recommended service delivery plans under a special drug offender
29 sentencing alternative may be paid, at the option of the county, from
30 funds provided to the county from the criminal justice treatment
31 account under RCW 71.24.580.

32 (11) Every five years, the department shall submit a report to
33 the governor and the appropriate committees of the legislature
34 analyzing the effectiveness of the drug offender sentencing
35 alternative in reducing recidivism among various offender
36 populations. The first report is due November 1, 2022, and every five
37 years thereafter. The department shall coordinate with the Washington
38 state institute for public policy and the caseload forecast council
39 in guiding its data tracking efforts and preparing the report.

1 **Sec. 2.** RCW 9.94A.662 and 2019 c 263 s 503 are each amended to
2 read as follows:

3 (1) The court may only order a prison-based special drug offender
4 sentencing alternative if the high end of the standard sentence range
5 for the current offense is greater than one year.

6 (2) A sentence for a prison-based special drug offender
7 sentencing alternative shall include:

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

11 (b) One-half the midpoint of the standard sentence range as a
12 term of community custody, which must include appropriate substance
13 ~~((abuse))~~ use disorder treatment in a program that has been approved
14 by the ~~((division of alcohol and substance abuse of the))~~ department
15 of ~~((social and))~~ health ~~((services))~~, and for co-occurring drug and
16 domestic violence cases, must also include an appropriate domestic
17 violence treatment program by a state-certified domestic violence
18 treatment provider pursuant to chapter 26.50 RCW;

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

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

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

26 ~~((2))~~ (3)(a) During incarceration in the state facility,
27 offenders sentenced under this section shall undergo a comprehensive
28 substance ~~((abuse))~~ use disorder assessment and receive, within
29 available resources, treatment services appropriate for the offender.
30 The substance ~~((abuse))~~ use disorder treatment services shall be
31 ~~((designed))~~ licensed by the ~~((division of alcohol and substance~~
32 ~~abuse of the))~~ department of ~~((social and))~~ health ~~((services, in~~
33 ~~cooperation with the department of corrections))~~.

34 (b) When applicable for cases involving domestic violence,
35 domestic violence treatment must be provided by a state-certified
36 domestic violence treatment provider pursuant to chapter 26.50 RCW
37 during the term of community custody.

38 ~~((3))~~ (4) If the department finds that conditions of community
39 custody have been willfully violated, the offender may be
40 reclassified to serve the remaining balance of the original sentence.

1 An offender who fails to complete the program or who is
2 administratively terminated from the program shall be reclassified to
3 serve the unexpired term of his or her sentence as ordered by the
4 sentencing court.

5 ~~((4))~~ (5) If an offender sentenced to the prison-based
6 alternative under this section is found by the United States attorney
7 general to be subject to a deportation order, a hearing shall be held
8 by the department unless waived by the offender, and, if the
9 department finds that the offender is subject to a valid deportation
10 order, the department may administratively terminate the offender
11 from the program and reclassify the offender to serve the remaining
12 balance of the original sentence.

13 **Sec. 3.** RCW 9.94A.664 and 2019 c 325 s 5003 and 2019 c 263 s 504
14 are each reenacted and amended to read as follows:

15 (1) (a) A sentence for a residential substance use disorder
16 treatment-based alternative shall include a term of community custody
17 equal to one-half the midpoint of the standard sentence range or two
18 years, whichever is greater, conditioned on the offender entering and
19 remaining in a residential substance use disorder treatment program
20 certified by the department of health for a period set by the court
21 ~~((between three and))~~ up to six months with treatment completion and
22 continued care delivered in accordance with the American society of
23 addiction medicine criteria.

24 (b) The sentence may include an indeterminate term of confinement
25 of no more than thirty days in a facility operated or utilized under
26 contract by the county in order to facilitate direct transfer to a
27 residential substance use disorder treatment facility.

28 (2) (a) During any period of community custody, the court shall
29 impose ~~((, as conditions of community custody,))~~ treatment and other
30 conditions ~~((as proposed in the examination report completed pursuant~~
31 ~~to RCW 9.94A.660))~~.

32 (b) ~~((If the court imposes a term of community custody, the))~~ The
33 department shall, within available resources, make substance use
34 disorder assessment and treatment services available to the offender
35 during ~~((the))~~ any term of community custody, and within available
36 resources, make domestic violence treatment services available to a
37 domestic violence offender during the term of community custody.

38 (3) (a) If the court imposes a sentence under this section, the
39 treatment provider must send the treatment plan to the court within

1 thirty days of the offender's arrival to the residential substance
2 use disorder treatment program and, when applicable, the domestic
3 violence treatment program.

4 (b) Upon receipt of the plan, the court shall schedule a progress
5 hearing during the period of (~~residential substance use disorder~~)
6 treatment, and schedule a treatment termination hearing for three
7 months before the expiration of the term of community custody.

8 (c) Before the progress hearing and treatment termination
9 hearing, the treatment provider and the department shall submit
10 written reports to the court and parties regarding the offender's
11 compliance with treatment and monitoring requirements, and
12 recommendations regarding termination from treatment.

13 (4) At a progress hearing or treatment termination hearing, the
14 court may:

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

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

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

24 (5) If the court imposes a term of total confinement, the
25 department shall, within available resources, make substance use
26 disorder assessment and treatment services available to the offender
27 during the term of total confinement and subsequent term of community
28 custody.

29 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2021.

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