

RCW 9.94A.500 Sentencing hearing—Presentencing procedures—

Disclosure of mental health services information. (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

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

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.

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

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall

provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.250, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.250, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2019 c 263 § 501; 2013 c 200 § 33; 2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

***Reviser's note:** RCW 10.95.030 was amended by 2023 c 102 § 20, deleting subsection (2) relating to "death sentence."

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2019 c 263 § 1004.]

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2013 c 200: See note following RCW 70.02.010.

Intent—2008 c 231 §§ 2-4: "It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

(1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;

(2) Ensuring punishment that is just; and

(3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not

implicated at resentencing following an appeal or collateral attack."
[2008 c 231 § 1.]

Application—2008 c 231 §§ 2 and 3: "Sections 2 and 3 of this act apply to all sentencings and resentencings commenced before, on, or after June 12, 2008." [2008 c 231 § 5.]

Severability—2008 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 231 § 62.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2000 c 75: See note following RCW 71.05.445.

Severability—1999 c 197: See note following RCW 9.94A.030.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

(1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and

(2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.