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HOUSE BILL 1791

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**By** Representatives Dickerson, O'Brien, Hurst, Green, Dammeier, Morrell, Orwall, Walsh, and Wood; by request of Department of Corrections

Read first time 01/29/09. Referred to Committee on Human Services.

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; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.505 and 2008 c 231 s 25 are each amended to read  
6 as follows:

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

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

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

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

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

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

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

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

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

3 (viii) RCW (~~9.94A.712~~) 9.94A.507, relating to certain sex  
4 offenses;

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

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

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

12 (b) If a standard sentence range has not been established for the  
13 offender's crime, the court shall impose a determinate sentence which  
14 may include not more than one year of confinement; community  
15 restitution work; a term of community custody under RCW 9.94A.545 not  
16 to exceed one year; and/or other legal financial obligations. The  
17 court may impose a sentence which provides more than one year of  
18 confinement and a community custody term under RCW 9.94A.715 if the  
19 court finds reasons justifying an exceptional sentence as provided in  
20 RCW 9.94A.535.

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

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

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

34 (6) The sentencing court shall give the offender credit for all  
35 confinement time served before the sentencing if that confinement was  
36 solely in regard to the offense for which the offender is being  
37 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 2008 c 231 s 30 are each amended to read  
11 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 standard sentence range for the current offense is greater  
37 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 determines  
6 that the offender is eligible for this alternative, the court may order  
7 an examination of the offender. The examination shall, at a minimum,  
8 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, if the court  
34 determines that a sentence under this section is appropriate, the court  
35 shall waive imposition of a sentence within the standard sentence range  
36 and impose a sentence consisting of either a prison-based alternative  
37 under subsection (5) of this section or a residential chemical  
38 dependency treatment-based alternative under subsection (6) of this

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

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

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

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

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

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

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

31 (6) The residential chemical dependency treatment-based alternative  
32 shall include:

33 (a) A term of community custody equal to one-half of the midpoint  
34 of the standard sentence range or two years, whichever is greater,  
35 conditioned on the offender entering and remaining in residential  
36 chemical dependency treatment certified under chapter 70.96A RCW for a  
37 period set by the court between three and six months. If the court  
38 imposes a term of community custody, the department shall, within

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

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

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

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

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

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

28 (7) The offender may be required to pay thirty dollars per month  
29 while on community custody to offset the cost of monitoring for alcohol  
30 or controlled substances.

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

32 (a) Pay all court-ordered legal financial obligations; or

33 (b) Perform community restitution work.

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

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

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

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

12 (10) In serving a term of community custody imposed upon failure to  
13 complete, or administrative termination from, the special drug offender  
14 sentencing alternative program, the offender shall receive no credit  
15 for time served in community custody prior to termination of the  
16 offender's participation in the program.

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

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

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

32 NEW SECTION. **Sec. 3.** This act takes effect August 1, 2009.

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