

64447-5

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No. 64447-5-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

NEIL DUANE DAVIS, Appellant.

BRIEF OF RESPONDENT

2010 JUL 27 AM 9:52
FILED
COURT OF APPEALS
DIVISION ONE
BELLINGHAM, WA

**DAVID S. McEACHRAN,
Whatcom County Prosecuting Attorney
By HILARY A. THOMAS
Appellate Deputy Prosecutor
Attorney for Respondent
WSBA #22007**

**Whatcom County Prosecutor's Office
311 Grand Avenue, Second Floor
Bellingham, WA 98225
(360) 676-6784**

TABLE OF CONTENTS

A. ISSUES PRESENTED..... 1

B. STATEMENT OF FACTS..... 1

C. ARGUMENT..... 5

1. The sentencing judge applied the wrong version of the statute in finding that Davis had to affirmatively and voluntarily admit the elements of the crime in order to be eligible for a SSOSA..... 6

2. Remand is necessary to correct the length of the Sexual Assault Protection Order. 11

D. CONCLUSION 12

TABLE OF AUTHORITIES

Washington State Court of Appeals

State v. Adams, 119 Wn. App. 373, 82 P.3d 1195 (2004)..... 8

State v. Adamy, 151 Wn. App. 583, 213 P.3d 627 (2009) 7

State v. J.W., 84 Wn. App. 808, 929 P.2d 1197 (1997)..... 7

Washington State Supreme Court

State v. Mail, 121 Wn.2d 707, 854 P.2d 1042 (1993) 7, 10

State v. Onefrey, 119 Wn.2d 572, 574 n.1, 835 P.2d 213 (1992)..... 7

State v. Osman, 157 Wn.2d 474, 139 P.3d 334 (2006)..... 7

State v. Talley, 134 Wn.2d 176, 188, 949 P.2d 358 (1998)..... 11

State v. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004)..... 8

Rules and Statutes

RCW 7.90.150 6, 12

RCW 9.94.670 (2004)..... 9

RCW 9.94A.345..... 8

RCW 9.94A.585..... 7

RCW 9.94A.670..... 9

RCW 9.94A.670 (2005)..... 9

RCW 9.94A.670 (2006)..... 9

Other Authorities

Laws of 2000, Chapter 26 §1 8

A. ISSUES PRESENTED

1. Whether the sentencing judge applied the wrong version of the SSOSA statute in finding that the defendant was not eligible for SSOSA because he had not affirmatively and voluntarily admitted the elements of the offense, as required by the September 2006 version of the statute, where the last date that defendant was alleged to have committed the crimes was in February of 2006 and the former statute did not require the defendant to affirmatively and voluntarily admit the elements?
2. Whether the Sexual Assault Protection Order imposed by the court is invalid where it provides that it is a lifetime order and the statute provides that such orders are to remain in effect for the term of sentence, including any community supervision, plus two years.

B. STATEMENT OF FACTS

On January 29, 2008 Appellant Michael Davis was charged with four counts of Rape of a Child in the Second Degree, three counts of Rape of a Child in the Third Degree, four counts of Child Molestation in the Second Degree and three counts of Child Molestation in the Third Degree, regarding K.A.M., the daughter of a friend of Davis's, for acts he committed, collectively, from February 22, 2003 through February 22 of 2006. CP 87-93. An amended information was filed on June 16, 2009 charging Davis with four counts of Rape of Child in the Second Degree, five counts of Rape of a Child in the Third Degree, four counts of Child Molestation in the Second Degree and three counts of Child Molestation in the Third Degree for acts Davis committed against K.A.M. during the

same time period. CP 79-83. That same day Davis pleaded guilty to two counts of Child Molestation in the Second Degree, for acts occurring between February 22, 2003 and February 22, 2004 and two counts of Rape of a Child in the Third Degree for acts occurring between February 22, 2004 and February 22, 2006. CP 87-88, 69-78. In lieu of making his own statement, Davis agreed that the court could review the police reports or probable cause statement to establish a factual basis for the plea. CP 75.

At the sentencing hearing on July 13, 2009, Judge Uhrig inquired why no presentence investigation (“PSI”) had been done on the case. 1RP 3.¹ The prosecutor indicated that it was an agreed recommendation as to sentence and defense counsel Mr. Follis and she had discussed it and agreed one wasn’t necessary. *Id.* The judge, who was not the one who took the plea, indicated that he was prepared to hear what the parties had to say but was concerned about imposing a sentence without a PSI. 1RP 3-4. The victim and the victim’s mother spoke. 1RP 4-8. The prosecutor informed the court it was an agreed disposition and explained how the parties had arrived at the agreement for 90 months. 1RP 10-13. The judge again expressed concern there was no PSI. 1RP 13-14. Mr. Follis informed the court that both parties and the victim’s family had agreed on

¹ 1RP refers to the verbatim report of proceedings for July 13, 2009 and September 16, 2009. 2RP refers to those for October 8, 2009.

a particular number for sentencing, detailed the negotiations, and then stated:

Mr. Davis also has expressed to me a very high desire for treatment. Not a SSOSA² type treatment. We did not go through a SSOSA evaluation. We did not petition the court for a SSOSA evaluation. Although statutorily he would have been eligible to do so, we spoke to Ms. Bracke early on and ascertained that the position of the victim and the victim's family was that it would not be in the community's best interest for Mr. Davis to be on a SOSSA (sic) and although statute was different at the time this offense occurred I just told him that my feeling was the court would not likely grant a SOSSA (sic) in the face of very strong objections on the part of the victim and the victims' family. So we talked a lot about what sort of treatment would be available to him in the Department of Corrections and he is very interested in that.

1RP 14-15, 17-18. Mr. Follis concluded his remarks: "This is an agreed recommendation that took a long time to put together and was negotiated not only with Ms. Bracke but also with the victim and the victim's family. I would ask the court to follow it." 1RP 19. Judge Uhrig declined to enter a sentence at that time because he didn't believe that a PSI could be waived. 1RP 20-23.

At the subsequent hearing on September 16, 2009, Mr. Follis requested a one month continuance because he hadn't received the PSI until the day before and had not had a chance to discuss it with Davis.

² Special Sex Offender Sentencing Alternative, hereinafter "SSOSA."

1RP 24. He also indicated that Davis was considering hiring new counsel, Mr. Mazzone. 1RP 24-25. The prosecutor opposed the length of the continuance, noting that the victim's mother was present in court again. Id. The court continued the hearing three weeks to the 8th of October. 1RP 28.

Prior to the next hearing, Davis filed a sentencing memorandum requesting the court to follow the joint recommendation noting that "Mr. Davis was denied a SSOSA option under this charge and, therefore, was not able to minimize his incarceration time in exchange for treatment ...". CP 43. He ultimately requested that the court sentence him to 90 months of imprisonment.³ CP 44.

At the sentencing hearing in October Mr. Mazzone appeared on behalf of Davis and requested that Davis be given an opportunity to obtain a SSOSA evaluation. 2RP 12. Mr. Mazzone explained that he had reviewed the hearing where Davis entered his plea, spoken with defense counsel and reviewed the plea statement form, and it appeared to him that there was no agreement that Davis could not seek a SSOSA, and given that, he should be given an opportunity to seek one. 2RP 5-10. The

³ The memorandum was filed by Mr. Mazzone, and Mr. Mazzone later explained that he had written the memo before realizing that Davis should be given an opportunity to seek a SSOSA. 2RP 21.

prosecutor responded that there had been an agreement that Davis would not seek a SSOSA, and that the agreement was for 90 months in prison. 2RP 13-16. Mr. Mazzone responded that there was nothing in the plea paperwork that stated not seeking a SSOSA was a condition of the plea, that it stated only that the State would not recommend a SSOSA. 2RP 17-18, 20.

The judge did not address the issue as to what the plea agreement encompassed, and instead inquired whether Davis had voluntarily and affirmatively admitted all the elements of the crime. 2RP 22. Finding that Davis had not affirmatively and voluntarily admitted all the elements of the crime, what he considered to be a “precondition” to a SSOSA, the judge denied the request for a SOSSA evaluation. 2RP 24. On a standard range of 87-116 months, the judge imposed the 90 month recommended sentence on counts VIII and IX and 60 months on counts XV and XVI. CP 28, 2RP 24, 28. The judge imposed a Sexual Assault Protection Order (“SAPO”) regarding the child victim that stated it was a lifetime order and did not expire. CP 37.

C. ARGUMENT

Davis asserts that in denying his request for a SSOSA evaluation the judge applied the wrong version of the special sex offender alternative sentencing statute. Specifically, he asserts that the sentencing judge erred

by applying the standard in the August 1, 2009 version of the statute that requires a defendant to affirmatively and voluntarily admit the elements of the offense, if pleading guilty, in order to be eligible for a SSOSA. The State agrees that the court applied the wrong version of the statute⁴ in finding Davis ineligible for a SSOSA, and therefore Davis may appeal his standard range sentence. While remand is appropriate, the State believes that remand before a different judge is not necessary under the facts of this case because the judge has not prejudged the issue to be addressed upon remand, whether Davis should be permitted an opportunity to obtain a SSOSA evaluation.

The State concedes that the sexual assault protection order exceeds the duration for such orders set forth in RCW 7.90.150. RCW 7.90.150 requires such orders be in effect for two years beyond expiration of the sentence, including community supervision. The matter should be remanded for correction of the length of time the order will be effective.

- 1. The sentencing judge applied the wrong version of the statute in finding that Davis had to affirmatively and voluntarily admit the elements of the crime in order to be eligible for a SSOSA.**

Davis asserts that he can appeal the sentencing judge's decision despite the fact that the judge imposed a standard range sentence. In

⁴ The State believes, however, that the relevant amendment to the statute was passed in

general a standard range sentence cannot be appealed. RCW 9.94A.585; State v. Osman, 157 Wn.2d 474, 481, 139 P.3d 334 (2006). Limited review is available, however, “if the sentencing court failed to comply with procedural requirements of the Sentencing Reform Act (“SRA”) or constitutional requirements.” *Id.* at 481-82. In order to appeal based on the court’s failure to follow a procedural requirement, the appellant must show that “the sentencing court had a duty to follow some specific procedure required by the SRA, and that the court failed to do so.” State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993). While a defendant may not challenge the length of a standard range sentence, s/he may appeal “the trial court’s interpretation of the SSOSA statutes.” State v. Adamy, 151 Wn. App. 583, 587, 213 P.3d 627 (2009); *accord*, State v. Onefrey, 119 Wn.2d 572, 574 n.1, 835 P.2d 213 (1992). Otherwise, the sentencing court has broad discretion in deciding whether to impose a SSOSA. Onefrey, 119 Wn.2d at 575; *see also*, State v. J.W., 84 Wn. App. 808, 811, 929 P.2d 1197 (1997) (A standard range sentence is not appealable on the basis that the trial court abused its discretion in not granting a SSODA). As Davis does not assert a constitutional claim, his ability to appeal his standard range sentence is limited to the issue of

2006 and became effective September 2006.

whether the judge failed to follow the procedural requirements of the SRA or misinterpreted a provision of the SSOSA statutes.

Davis claims that the judge applied the wrong version of the SSOSA statute in denying his request for a SSOSA evaluation. Sentences under the SRA are to be imposed generally in accord with the substantive statutory provisions in effect at the time the offender committed his/her crime. RCW 9.94A.345; State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004). The legislature intended that RCW 9.94A.345, the timing statute, address “the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives.” Laws of 2000, Chapter 26 §1. An offender’s eligibility for a SSOSA is to be determined in accord with the statutes in effect at the time of the offense. *See, State v. Adams*, 119 Wn. App. 373, 376-77, 82 P.3d 1195 (2004) (defendant was permitted to withdraw his guilty plea because defense counsel had erroneously advised him regarding his eligibility for a SSOSA under the incorrect version of the statute).

Under the applicable sex offender sentencing statute at the time of Davis’s crimes, the statute provided that the court may order an examination of the defendant if it found that the defendant was eligible for

the sentencing alternative. RCW 9.94A.670(3).⁵ Under the SSOSA statute in 2004, a defendant was eligible for a SSOSA if: (1) the defendant's sex offense conviction was not a serious violent offense or a violation of RCW 9A.44.050 (rape in the second degree); (2) the defendant did not have any prior convictions for "sex offenses" as defined in the statute; and (3) the standard range for defendant's offense was less than 11 years. RCW 9.94.670 (2004). Effective July 1, 2005 in order for a defendant to be eligible for a SSOSA, the legislature also required that the defendant not have prior convictions for specified violent offenses, that the offense did not result in substantial bodily harm to the victim and that there was a relationship between the defendant and victim prior to the offense. RCW 9.94A.670 (2005); App. A. The legislature amended the SSOSA statute again in 2006, effective in September 2006, to require that if the defendant pleaded guilty, the defendant had to voluntarily and affirmatively admit that s/he committed the elements of the offense as part of the plea in order to be eligible for a SSOSA.⁶ RCW 9.94A.670 (2006); App. B.

⁵ This specific provision of the statute has not changed from 2004 to the present.

⁶ Davis asserts this amendment was passed by the legislature in 2008 and effective in August 1, 2009. See Appellant's Brief at 7. The legislature passed the amendment in 2006, but as it was not effective until September 2006 it still was not the statute in effect at the time Davis committed his crimes. See Appendix B.

At the continuation of the sentencing hearing, new defense counsel requested that the court permit Davis to obtain a SSOSA evaluation. After argument from the prosecutor and Mr. Mazzone as to whether the request violated the plea agreement, the court inquired as to whether Davis had voluntarily and affirmatively admitted that he committed all of the elements of the crime, noting that there was a spot in the plea form for him to do so. 2RP 22. The prosecutor noted that instead of making a statement admitting the elements, he had marked the box permitting the court to review the affidavit of probable cause. 2RP 23. Mr. Mazzone indicated he couldn't take a position on the matter. *Id.* The court then found that Davis had not met that requirement of eligibility for a SSOSA, and denied the SSOSA evaluation request. 2RP 24.

While the crimes here spanned a number of years, from February 22, 2003 to February 22, 2006, they did not include a time period beyond February of 2006. The sentencing judge erred in applying the version of the SSOSA statute requiring defendants to freely and voluntarily admit the elements of the crime, effective September 2006, in order to be eligible for a SSOSA.

While the court erred in applying the wrong version of the statute, the court otherwise had the discretion to deny the request for an evaluation. *See, State v. Mail*, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993)

(“Outside of narrow constitutional or statutory limitations, a sentencing judge’s discretion remains largely unfettered”). Remand is appropriate given the judge’s error, although the court certainly had the discretion to deny Davis’s request where he waited until the eleventh hour to make the request.

Upon remand, the matter does not need to be heard by a different judge as advocated by Davis. While Davis asserts that the appropriate remedy would be a hearing in front of another judge, that remedy is appropriate only when the facts of the case show that the judge has prejudged the defendant’s sentence or the issue before the court. *See, State v. Talley*, 134 Wn.2d 176, 182, 188, 949 P.2d 358 (1998). That is not the case here as the judge denied the evaluation request based on an erroneous legal conclusion that Davis was not eligible for a SSOSA. If the same judge were to hear this sentencing issue, the victim’s mother, who has already appeared twice for sentencing, would not have to reappear to make her statement to the sentencing judge unless she chose to.

2. Remand is necessary to correct the length of the Sexual Assault Protection Order.

Davis next asserts that the Sexual Assault Protection (SAPO) that was imposed at sentencing is invalid because it exceeds the statutory maximum for the class B and C felonies that he committed. The State

concedes that the length of the SAPO exceeds that provided by law. Under RCW 7.90.150 a post-conviction SAPO “shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.” RCW 7.90.150(6)(c). The language of the order here indicates that it is a lifetime protection order and does not expire. CP 37. A lifetime protection order exceeds the time period provided by statute. The matter should be remanded for the court to correct the period of time set forth in the SAPO.

D. CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court remand this matter for the sentencing judge to consider Davis’s SSOSA evaluation request under the correct version of the statute and for correction of the time period set forth in the SAPO.

Respectfully submitted this 23rd day of July, 2010.


HILARY A. THOMAS, WSBA #22007
Appellate Deputy Prosecutor
Attorney for Respondent

CERTIFICATE

I certify that on this date I deposited in the United States mails, postage prepaid, a properly stamped and addressed envelope, or otherwise caused to be delivered, a copy of the document to which this certificate is attached, directed to this court and Appellant's attorney, Eric Broman, addressed as follows:

Nielsen, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122

Sydney A. Koss
Legal Assistant

07/26/2010
Date

APPENDIX A

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(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

Sec. 4. RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read as follows:

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

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

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

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

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

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

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

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

(d) The offense did not result in substantial bodily harm to the victim,

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

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

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

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

- (i) The offender's version of the facts and the official version of the facts;
- (ii) The offender's offense history;
- (iii) An assessment of problems in addition to alleged deviant behaviors;
- (iv) The offender's social and employment situation; and
- (v) Other evaluation measures used.

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

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

- (i) Frequency and type of contact between offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions and affirmative conditions which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of

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(c) Appropriate conditions or restrictions that should be placed on offenders who receive a sentence alternative; and

(d) Standards for revocation of a sentencing alternative suspended sentence.

(5) The institute and the sentencing guidelines commission shall report their results and recommendations to the appropriate standing committee of the legislature no later than December 31, 2004.

NEW SECTION. Sec. 8. 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.

NEW SECTION. Sec. 9. Sections 2 through 6 of this act take effect July 1, 2005.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Engrossed Substitute House Bill No. 2400 entitled:

"AN ACT Relating to sentence enhancement for sex crimes against minors;"

This bill makes improvements in the Special Sex Offender Sentencing Alternative, which is needed to get convictions, hold sex offenders accountable, and protect child victims.

I have vetoed section 1, the intent section, because it includes rhetorical language that could inadvertently be misused to increase taxpayers' liability for harm that should be the responsibility of sex offenders themselves. Section 1 discusses a paramount duty of the Legislature to protect children from victimization by sex offenders. Although I agree that the state has the responsibility to take action within its powers and authority, this language could be misunderstood to create a new duty, which would be a higher duty than many equally important government activities and protections. In addition, the section discusses structure and administrative weaknesses in the Special Sex Offender Sentencing Alternative. Taken out of context, this language could be misinterpreted and used to indicate an admission of liability when none exists.

For these reasons, I have vetoed section 1 of Engrossed Substitute House Bill No. 2400.

With the exception of section 1, Engrossed Substitute House Bill No. 2400 is approved."

CHAPTER 177

[Engrossed Substitute House Bill 2693]

TIMBER TAX—PUBLIC LANDS

AN ACT Relating to the taxation of timber on publicly owned land; amending RCWs 84.33.035, 84.33.051, 84.33.040, 84.33.078, and 79.15.100; adding a new section to chapter 84.33 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.33.035 and 2003 c 313 s 12 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

APPENDIX B

CHAPTER 133

[House Bill 3252]

SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE

AN ACT Relating to prohibiting offenders who enter Alford pleas from receiving a special sex offender sentencing alternative; reenacting and amending RCW 9.94A.670; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

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

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

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

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

(ii) The offender's offense history;

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

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on (3) of this section or any
profits with the person who
section, unless the court has
re best interests of the victim
uld otherwise be impractical
his subsection shall only be
iders or certified affiliate sex

offender treatment providers under chapter 18.155 RCW unless the court finds that:

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

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

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

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

Passed by the House February 1, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 134

[Substitute House Bill 2654]

SEX OFFENDER TREATMENT PROVIDERS

AN ACT Relating to sex offender treatment providers; and amending RCW 18.155.070 and 18.155.075.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.155.070 and 1990 c 3 s 807 are each amended to read as follows:

The department shall issue a certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of any experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(5) Not convicted of a sex offense, as defined in RCW 9.94A.030 or convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; and

(6) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider.

Sec. 2. RCW 18.155.075 and 2004 c 38 s 6 are each amended to read as follows:

The department shall issue an affiliate certificate to any applicant who meets the following requirements:

**WASHINGTON SESSION LAWS
GENERAL INFORMATION**

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
 - (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.68 per set (\$20.00 plus \$1.68 for state and local sales tax at 8.4%). The permanent edition costs \$37.94 per volume (\$35.00 plus \$2.94 for state and local sales tax at 8.4%). All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

- (a) In amendatory sections
 - (i) underlined matter is new matter.
 - (ii) ~~deleted matter is ((lined out and bracketed between double parentheses)).~~
- (b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES

- (a) Vetoed matter is *printed in bold italics*.
- (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2006 regular session to be June 7, 2006 (midnight June 6th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 2006 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

Chapter No.	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	