

64447J

64447J  
RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
APR 9 2010

NO. 64447-5-1

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

NEIL DAVIS,

Appellant.

---

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Ira J, Uhrig, Judge

---

---

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
APR 9 2010

OPENING BRIEF OF APPELLANT

---

---

ERIC BROMAN  
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Related to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	3
C. <u>ARGUMENT</u> .....	8
1. THE COURT ERRED IN FINDING DAVIS INELIGIBLE FOR A SSOSA AND IN DENYING THE REQUEST FOR AN EVALUATION.....	8
2. THE TRIAL COURT ERRED IN ENTERING A LIFETIME SEXUAL ASSAULT PROTECTION ORDER.....	12
D. <u>CONCLUSION</u> .....	14

## TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>In re Postsentence Review of Leach</u> 161 Wn.2d 180, 163 P.3d 782 (2007) .....	8, 12
<u>In re Restraint of Spencer</u> 152 Wn. App. 698, 218 P.3d 924 (2009).....	10
<u>State v. Adamy</u> 151 Wn. App. 583, 213 P.3d 627 (2009).....	6, 9, 11, 12
<u>State v. Ameline</u> 118 Wn. App. 128, 75 P.3d 589 (2003).....	11
<u>State v. Armendariz</u> 160 Wn.2d 106, 156 P.3d 201 (2007) .....	8, 12, 13
<u>State v. Bahl</u> 164 Wn.2d 739, 193 P.3d 678 (2008) .....	12
<u>State v. Grayson</u> 154 Wn.2d 333, 111 P.3d 1183 (2005) .....	9, 12
<u>State v. Harrison</u> 148 Wn.2d 550, 61 P.3d 1104 (2003) .....	11
<u>State v. M.L.</u> 134 Wn.2d 657, 952 P.2d 187 (1998) .....	11
<u>State v. Osman</u> 157 Wn.2d 474, 139 P.3d 334 (2006) .....	9, 10, 12
<u>State v. Parker</u> 132 Wn.2d 182, 937 P.2d 575 (1997) .....	10, 13
<u>State v. Romano</u> 34 Wn. App. 567, 662 P.2d 406 (1983).....	11

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Sledge</u> 133 Wn.2d 828, 947 P.2d 1199 (1997).....	11
<u>State v. Smith</u> 144 Wn.2d 665, 30 P.3d 1245, 39 P.3d 294 (2001).....	8, 12
<u>State v. Talley</u> 134 Wn.2d 176, 949 P.2d 358 (1998).....	11
<u>State v. Varga</u> 151 Wash.2d 179, 86 P.3d 139 (2004).....	10
<u>State v. Williams</u> 149 Wn.2d 143, 65 P.3d 1214 (2003).....	10, 12
 <u>FEDERAL CASES</u>	
<u>North Carolina v. Alford</u> 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).....	9, 10
<u>State v. Newton</u> 87 Wn.2d 363, 552 P.2d 682 (1976).....	9, 10
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
Former RCW 9.94A.670(4) (2004).....	5
Laws 2006, ch. 138, § 16.....	13
Laws 2008, ch. 231, § 31.....	7, 9
Laws of 2004, ch. 176, § 4.....	6
RCW 7.90.150.....	13
RCW 9.94A.345.....	8, 10

**TABLE OF AUTHORITIES (CONT'D)**

	Page
RCW 9.94A.505 .....	13
RCW 9.94A.670 .....	9
RCW 9A.20-021 .....	12
RCW 9A.44.079 .....	3
RCW 9A.44.086 .....	3
Sentencing Reform Act .....	8, 9, 13
U.S. Const. art. I, § 9.....	13
Wash. Const. art. I, § 23 .....	13

A. ASSIGNMENTS OF ERROR

1. The sentencing court erred in applying the wrong statute to find appellant was not eligible for a Special Sexual Offender Sentencing Alternative (SSOSA). 2RP 23-24.<sup>1</sup>

2. The court erred in misreading the amended statute to conclude it barred SSOSA eligibility.

3. The court erred in denying the request to continue sentencing for a SOSSA evaluation.

4. The court erred in entering a lifetime sexual assault protection order (SAPO). CP 37-38; appendix A.

Issues Related to Assignments of Error

1. Appellant's offenses occurred in 2003 and 2004. The court applied a sentencing statute effective August 1, 2009, to find he was not eligible for a SSOSA. Did the court err in (a) applying the amended statute and (b) misreading the amended statute, to determine appellant was not eligible for a SSOSA?

---

<sup>1</sup> This brief refers to the transcripts as follows: 1RP – July 13 and September 16, 2009; 2RP – October 8, 2009.

2. Appellant's offenses were class B and C felonies. Did the court err in imposing a lifetime SAPO that exceeds the sentencing court's authority?

B. STATEMENT OF THE CASE

On January 29, 2008, the Whatcom County prosecutor charged appellant Neil Davis with fourteen counts for offenses committed against K.A.M., a juvenile. CP 89-93. On June 16, 2009, in resolving the case by plea agreement, the state filed an amended information charging 16 counts. CP 79-83. Davis pled guilty to counts 8, 9, 15, and 16. CP 18-25, 69-76. Counts 8-9 alleged second degree child molestation, occurring between February 22, 2003 and February 22, 2004. CP 69-70 (RCW 9A.44.086). Counts 15-16 alleged third degree child rape, occurring between February 22, 2004 and February 22, 2006. CP 70 (RCW 9A.44.079).

The plea form advised Davis the standard range for counts 8-9 was 87-116 months. The range for counts 15-16 was 60 months, the statutory maximum. CP 70. The form informed Davis the state would recommend a sentence of 90 months on counts 8-9, 60 months on counts 15-16, and dismissal of the remaining counts. CP 72. The state would not recommend a SSOSA. CP 73. The prosecutor wrote this recommendation was "agreed." CP 73.

The form also included a notification the judge could suspend the sentence and impose a SSOSA. The parties did not strike this language as inapplicable. CP 74. On the form Davis did not offer his own words as to what he did that constituted the crime, but he agreed

the court could review the police reports and/or statement of probable cause to establish the factual basis for the plea. CP 75. The statement of probable cause showed Davis admitted the allegations when confronted by the victim's mother. CP 88.

The sentencing hearing was initially scheduled for July 13, 2009. The court heard from the victim's mother, who discussed impacts to her daughter and advocated for a lengthy sentence. 1RP 5-8. The victim also spoke briefly. 1RP 8.

The prosecutor then discussed the "agreed disposition," and the impacts on the victim. 1RP 10. There were proof problems that led the state to reach the 90-month sentence recommendation it believed was appropriate. 1RP 11-12.

Defense counsel said the focus should not be on the sentencing range, but on the particular 90-month number the parties had negotiated. 1RP 14-15. Counsel also discussed that Davis had successfully completed all the treatment for an alcohol treatment program on a deferred DUI disposition. He had entered a counseling program and had made dramatic progress. These offenses had occurred years earlier and he had since changed. 1RP 15-16.

Counsel also noted they had not petitioned for a SSOSA evaluation or treatment. According to counsel, they had ascertained the victim's family would oppose a SSOSA, and although the SSOSA

statute was different at the time of these offenses,<sup>2</sup> counsel felt it was not likely a SSOSA would be granted over strong objection from the victim's family. 1RP 17.

The court was concerned as to why no presentence investigation (PSI) had been completed. After hearing the above information, the court determined that a PSI was statutorily required and continued the sentencing. 1RP 4, 13, 20-21.

The parties next appeared on September 16, 2009. Davis' initial defense counsel had not been provided a copy of the PSI in time to allow the opportunity to discuss it with Davis. New counsel also appeared with Davis. The court found good cause to continue the sentencing to October 8. 1RP 25-28.

At the hearing on October 8, new counsel Pete Mazzone appeared for Davis. Mazzone argued for two corrections to the PSI, and the court agreed those corrections would be made. 2RP 3-4. Mazzone also argued the court should permit a SSOSA evaluation. Although the initial charges had led to a sentencing range beyond the limit for SSOSA eligibility, the four convictions did not preclude a

---

<sup>2</sup> Counsel was referring to an amendment in 2005. Under the former statute, the court would "consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. Former RCW 9.94A.670(4) (2004). Effective July 1, 2005, however, the legislature changed SSOSA eligibility requirements and expressly stated the sentencing court must give "great weight" to the victim's

SSOSA. 2RP 4-5. Mazzone pointed out the court was not bound by the parties' sentencing recommendations. There was never an agreement not to seek a SSOSA, although the state was not going to recommend it. 2RP 5-7.

Mazzone also cited State v. Adamy, 151 Wn. App. 583, 213 P.3d 627 (2009) and pointed out the trial court there had erred in failing to exercise its discretion because it had erred in concluding Adamy was not eligible for a SSOSA. Trial counsel in Adamy also was ineffective in not making the eligibility argument plain for the court. 2RP 8-9.

Mazzone argued the court should direct a SSOSA evaluation so it could carefully consider the available sentencing options. Davis was eligible for a SSOSA and the court should carefully exercise its discretion by first considering a SSOSA evaluation. 2RP 9-10, 12. Mazzone pointed out additional errors in the PSI, which recommended a 108-month sentence. 2RP 10-11.

In response, the prosecutor argued the state never intended to offer Davis the option for a SSOSA. The state's position was that the 90-month sentence was an agreed recommendation. 2RP 13-16. The prosecutor toyed with the idea that the state could decline to

---

wishes when considering the propriety of a SSOSA. RCW 9.94A.670(4); Laws of 2004, ch. 176, § 4.

make the 90-month recommendation, but ultimately the state recommended the 90-month sentence. 2RP 15-16.

Mazzone again pointed out that an agreement to a sentence length does not preclude a SSOSA request. Mazzone and Davis both emphasized Davis' success in other treatment efforts. Davis should be allowed to ask for a SSOSA, and in order to do that, an evaluation was necessary. 2RP 17-22, 26-28.

The trial court asked Mazzone if Davis had voluntarily and affirmatively admitted he committed all the elements of the crime. The court's question was based on amendments to the SSOSA statute effective August 1, 2009.<sup>3</sup> The prosecutor pointed out Davis had permitted the court to consider the certificate of probable cause to supply the factual basis for the offense, but he had not included a personal statement of facts. CP 75; 2RP 22-23.

The court then relied on the 2009 statute to find that Davis was not eligible for a SSOSA. Finding there was no "voluntary affirmative admission," the court denied the request for an evaluation. 2RP 24.

The court then imposed 90-month sentences on counts 8-9, and 60-month sentences on counts 15-16. CP 31; 2RP 28. The court also entered a sexual assault protection order. The order states

---

<sup>3</sup> Laws of 2008, ch., 231, 31. A copy of the 2009 statute is attached as appendix B.

it "DOES NOT EXPIRE. This is a lifetime protection order." CP 31, 37; appendix A.

The judgment and sentence found counts 8-9 were committed on February 22, 2003. Counts 15-16 were committed on February 22, 2004. CP 27. These dates were the beginning of the respective charging periods. CP 81-82.

Davis timely appeals. CP 2.

C. ARGUMENT

1. THE COURT ERRED IN FINDING DAVIS INELIGIBLE FOR A SSOSA AND IN DENYING THE REQUEST FOR AN EVALUATION.

When imposing a sentence under Washington's Sentencing Reform Act (SRA), the court's authority is limited to that granted by statutes in effect at the time the offense was committed. RCW 9.94A.345; In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Smith, 144 Wn.2d 665, 673-75, 30 P.3d 1245, 39 P.3d 294 (2001). Because this is a question of law, a reviewing court owes no deference to the trial court's decision. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Every defendant is entitled to ask the trial court for a statutory sentencing alternative and to have that alternative actually considered. A sentencing court's failure to apply the correct law is an abuse of discretion, as is its failure to exercise its discretion. State v.

Grayson, 154 Wn.2d 333, 341-42, 111 P.3d 1183 (2005); State v. Adamy, 151 Wn. App. 583, 213 P.3d 627 (2009). A trial court "abuses its discretion if it categorically refuses to impose a particular sentence or if it denies a sentencing request on an impermissible basis." State v. Osman, 157 Wn.2d 474, 482, 139 P.3d 334 (2006).

These offenses occurred in 2003 and 2004. CP 27. Davis met the SSOSA eligibility requirements under the statute in effect at that time. RCW 9.94A.670(2) (2004).<sup>4</sup>

Sentencing did not occur until 2009, however. A 2008 amendment, effective August 1, 2009, added several eligibility requirements. The trial court relied on this new requirement:

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 has 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 Wn.2d 363, 552 P.2d 682 (1976)[.]

RCW 9.94A.670(2)(a) (as amended by Laws 2008, ch. 231, § 31); appendix B. By relying on the amended statute, the trial court erred in at least two ways.

First, the court applied the wrong version of the statute. As shown above, the SRA requires sentencing courts to apply the statute

---

<sup>4</sup> The 2004 version is attached as appendix C.

in effect at the time of the offense. RCW 9.94A.345; State v. Varga, 151 Wash.2d 179, 191, 86 P.3d 139 (2004); see also, Osman, 157 Wn.2d at 477 n.2 (noting the SSOSA statute that applies is the statute in effect when the offense is committed). The court erred by instead applying the statute in effect at the time of sentencing. State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003) (error to retroactively apply version of DOSA statute not in effect when offense was committed); State v. Parker, 132 Wn.2d 182, 188-89, 937 P.2d 575 (1997) (error to wrongly calculate an offender score based on statute not in effect when offense was committed).

Second, the court misread the amended statute. Davis pled guilty and affirmatively admitted the facts supporting the charges. He did so by adopting the probable cause statement as the factual basis for the plea. CP 75. That statement showed Davis “admitted to the allegations when confronted.” CP 88.

The amended statute does not preclude SSOSA eligibility for Davis’ plea. It bars Alford/Newton pleas from SSOSA consideration, but those who enter Alford/Newton pleas expressly decline to admit the alleged facts.<sup>5</sup> Where Davis did not enter an Alford/Newton plea,

---

<sup>5</sup> See, e.g., In re Restraint of Spencer, 152 Wn. App. 698, 700 n.1, 218 P.3d 924 (2009).

and where he admitted the facts, the court erred when it ruled Davis' plea barred SSOSA eligibility under the amended statute.

Both errors led the trial court to wrongly conclude Davis was not eligible for a SSOSA. The errors are errors of law and an abuse of discretion. Adamy, at 587. The proper remedy is to remand for resentencing before a different judge<sup>6</sup> for a fair consideration of a SSOSA. Adamy, 151 Wn. App. at 589.

In response, the state may claim Davis cannot appeal the denial of a SSOSA. Such a response would overlook settled Washington law and the nature of the sentencing court's legal error. Appellate review of standard range sentences is limited, but not prohibited. If a sentencing court makes an error of law in applying an incorrect statute or in failing to follow required procedure, the error

---

<sup>6</sup> Several cases provide examples of this remedy. See State v. Sledge, 133 Wn.2d 828, 846 n.9, 947 P.2d 1199 (1997) (remanded to different judge "in light of the trial court's already-expressed views on the disposition"); accord, State v. Harrison, 148 Wn.2d 550, 559-60, 61 P.3d 1104 (2003) (resentencing before different judge should be the remedy where state breaches a plea agreement and the defense seeks specific performance); State v. Talley, 134 Wn.2d 176, 182, 188, 949 P.2d 358 (1998) (remanded to different judge where it appeared that initial judge may have "prejudged the matter"); State v. M.L., 134 Wn.2d 657, 661, 952 P.2d 187 (1998) (remand to different judge required where disposition was found clearly excessive); State v. Ameline, 118 Wn. App. 128, 134, 75 P.3d 589 (2003) (remand to different judge following improper exceptional sentence); State v. Romano, 34 Wn. App. 567, 570, 662 P.2d 406 (1983) (remanded to different judge where initial sentencing suffered from appearance of unfairness).

may be raised on appeal. RCW 9.94A.585(1); Grayson, 154 Wn.2d at 338; Osman, 157 Wn.2d at 481-82; Williams, 149 Wn.2d at 146-47; Adamy, 151 Wn. App. at 587.

2. THE TRIAL COURT ERRED IN ENTERING A LIFETIME SEXUAL ASSAULT PROTECTION ORDER.

Davis was convicted of class B and C felonies. CP 81-82. The maximum sentences are 10 and 5 years, respectively. CP 28; RCW 9A.20-021(1). The court erred by imposing a lifetime protection order that exceeds statutory authority.

A trial court's authority to impose conditions of sentence is limited to the authority provided by statute. Leach, 161 Wn.2d at 184; Smith, 144 Wn.2d at 673-75. No deference is owed to the trial court on this question of law. Armendariz, 160 Wn.2d at 110. Where a sentence exceeds the court's sentencing authority, the error may be raised for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

The statute authorizing a SAPO provides:

A final sexual assault protection order entered in conjunction with a criminal prosecution 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) (enacted by Laws 2006, ch. 138, § 16).<sup>7</sup>

Assuming the 2006 statute may constitutionally apply to the 2003 and 2004 offenses,<sup>8</sup> the trial court imposed only a 90-month sentence. The statutory maximum for the class B offenses is ten years. A lifetime order exceeds the court's authority. The order should be vacated and the matter remanded for imposition of an order with a lawful expiration date.

---

<sup>7</sup> The SRA independently authorizes no-contact orders, but those are limited in duration to the statutory maximum. Armendariz, 160 Wn.2d at 111-20 (citing RCW 9.94A.505(8)).

<sup>8</sup> The ex post facto clauses of the state and federal constitutions prohibit a court from imposing a more punitive sentence than was authorized at the time the offense was committed. U.S. Const. art. I, § 9; Const. art. I, § 23; Parker, at 192 n.14. Where it is unclear that this order is more punitive than an SRA no-contact order, no ex post facto issue is raised here.

D. CONCLUSION

For the reasons stated in argument 1, the sentences should be vacated and the matter remanded for a SSOSA evaluation and sentencing consideration by a different judge. For the reasons in argument 2, the SAPO should be vacated and the matter remanded for an order that does not exceed the court's sentencing authority.

DATED this 30<sup>th</sup> day of April, 2010.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



---

ERIC BROMAN, WSBA 18487  
OID No. 91051  
Attorneys for Appellant

APPENDIX A

No. 64447-5-1

CP 37-38

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON, ) No. 08-1-00133-7  
)  
Plaintiff, )  
) APPENDIX F - SEXUAL ASSAULT PROTECTION  
vs. ) ORDER  
) (Criminal/Felony)  
NEIL DUANE DAVIS, DOB: April 24, 1970 ) (ORSXP)  
) (JIS order code: SXP)  
Defendant. )  
) [XX] Post Conviction  
) [XX] Clerk's Action required

1. The court find that the defendant has been convicted of a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030. Additional findings on page two.

2. This Sexual Assault Protection Order is entered pursuant to Laws of 2006, ch. 138 § 16. This order protects:

KAHLYN A. MARTIN (DOB 2/22/90), 4183 WEST LAKE SAMMAMISH PARKWAY B103, BELLEVUE, WA  
98008

**IT IS ORDERED:**

This Post Conviction Sexual Assault Protection Order DOES NOT EXPIRE. This is a lifetime protection order.

(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence if imprisonment and subsequent period of community supervision, conditional release, probation or parole.)

Defendant is **RESTRAINED** from:

- A. [XX] Having any contact with the protected person(s) directly, indirectly or through third parties regardless of whether those third parties know of the order.
- B. [XX] Knowingly coming within or knowingly remaining with 500 feet of the protected person(s) [X] residence, [X] school, [X] place of employment, [ ] other: \_\_\_\_\_
- C. [XX] Obtaining, owning, possessing or controlling a firearm.

**WARNINGS TO THE DEFENDANT: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.**

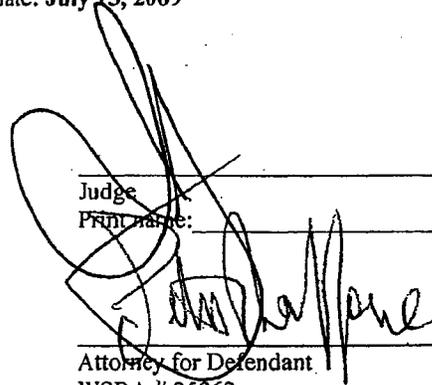
It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to: Ferndale Police Department which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

This order is issued in accordance with Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265. The court determines that the defendant's relationship to a person protected by this order is: . Therefore, 18 U.S.C. §§ 2261 (federal violation penalties) may apply to this order.

Done in Open court in the presence of the defendant this date: July 13, 2009

  
\_\_\_\_\_  
Defendant  
Print name: NEIL DUANE DAVIS

  
\_\_\_\_\_  
Dona Bracke  
WSBA# Dona Bracke  
Print name DONA BRACKE

  
\_\_\_\_\_  
Judge  
Print name:  
\_\_\_\_\_  
Attorney for Defendant  
WSBA # 25262  
Print name: PETER MAZZONE

A Law Enforcement Information Sheet (LEIS) must be completed.

**APPENDIX B**

**No. 64447-5-1**

**RCW 9.94A.670**

**2009 Version**

WEST'S REVISED CODE OF WASHINGTON ANNOTATED  
TITLE 9. CRIMES AND PUNISHMENTS  
CHAPTER 9.94A. SENTENCING REFORM ACT OF 1981

**9.94A.670. Special sex offender sentencing alternative (Effective August 1, 2009)**

(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, 27L.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;

(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 similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to \*RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to \*RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8) (a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10) (a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers 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.

(14) 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.

CREDIT(S)

[2008 c 231 § 31, eff. Aug. 1, 2009; 2006 c 133 § 1, eff. June 7, 2006. Prior: 2004 c 176 § 4, eff. July 1, 2005; 2004 c 38 § 9, eff. July 1, 2004; 2002 c 175 § 11; 2001

2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

**\*Reviser's note:** RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

**Intent--Application--Application of repealers--Effective date--2008 c 231:** See notes following RCW 9.94A.701.

**Severability--2008 c 231:** See note following RCW 9.94A.500.

**Severability--Effective date--2004 c 176:** See notes following RCW 9.94A.515.

**Effective date--2004 c 38:** See note following RCW 18.155.075.

**Effective date--2002 c 175:** See note following RCW 7.80.130.

**Intent--Severability--Effective dates--2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application--2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

Laws 2001, 2nd Sp.Sess., ch. 12, § 316, in subsec. (4), inserted reference to minimum term of sentence pursuant to § 303; corrected the spelling of "than"; and, in par. (a), inserted reference to maximum term imposed pursuant to § 303.

Laws 2002, ch. 175, § 11 substituted "community restitution" for "community service".

2004 Legislation

Laws 2004, ch. 38, § 9, in subsec. (1)(a), inserted "or a certified affiliate sex offender treatment provider"; and rewrote subsec. (11), which formerly read:

"(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to 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 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."

Laws 2004, ch. 176, § 4, rewrote the section, which previously read:

"(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) '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 state; and

"(c) 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.

"(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 and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

"(a) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

"(b) The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

"(5) As conditions of the suspended sentence, the court may impose one or more of the following:

"(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

"(b) Crime-related prohibitions;

"(c) Require the offender to devote time to a specific employment or occupation;

- "(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- "(e) Report as directed to the court and a community corrections officer;
- "(f) Pay all court-ordered legal financial obligations as provided in RCW9.94A.030;
- "(g) Perform community restitution work; or
- "(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.
- "(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.
- "(7) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.
- "(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.
- "(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.
- "(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.
- "(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to 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 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."

#### 2006 Legislation

Laws 2006, ch. 133, § 1 rewrote subsec. (2)(a) and corrected a citation. Subsection (2)(a) formerly read:

"(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;"

#### 2008 Legislation

Laws 2008, ch. 231, § 31, corrected citations; made nonsubstantive changes; and inserted subsc: (12).

#### LIBRARY REFERENCES

##### 2003 Main Volume

Sentencing and Punishment  703.  
Westlaw Topic No. 350H.  
C.J.S. Infants §§ 95, 100 to 107.

#### NOTES OF DECISIONS

**In general 1**  
**Notice of eligibility 2**  
**Prior out-of-state conviction 3**  
**Review 4**  
**Revocation 5**

##### 1. In general

Under special sex offender sentencing alternative (SSOSA) statute in effect at time defendant committed first degree child rape, trial court was not required to consider victim's opinion about whether defendant should receive a treatment disposition, rather than revocation of SSOSA, when he violated the terms of his SSOSA; under the former version of the statute, court was only required to consider whether defendant violated SSOSA conditions or failed to make satisfactory treatment progress. State v. Ramirez (2007)

APPENDIX C

No. 64447-5-1

RCW 9.94A.670

2004 Version

West's RCWA 9.94A.670

West's Revised Code of Washington Annotated Currentness

Title 9. Crimes and Punishments (Refs & Annos)

Recommended Prosecuting Standards for Charging and Plea Dispositions

**9. 94A. 670. Special sex offender sentencing alternative**

(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) "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 state; and

(c) 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.

(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 and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(b) The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

- (a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;
- (b) Crime-related prohibitions;
- (c) Require the offender to devote time to a specific employment or occupation;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer;

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community restitution work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(7) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance; offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.

(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in \*RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to 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 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.

CREDIT(S)

[2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

#### HISTORICAL AND STATUTORY NOTES

**\*Reviser's note:** This RCW reference has been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

Laws 2001, 2nd Sp.Sess., ch. 12, § 316, in subsec. (4), inserted reference to minimum term of sentence pursuant to § 303; corrected the spelling of “than”; and, in par. (a), inserted reference to maximum term imposed pursuant to § 303.

Laws 2002, ch. 175, § 11 substituted “community restitution” for “community service”.

#### LIBRARY REFERENCES

2003 Main Volume

Sentencing and Punishment  703.

Westlaw Topic No. 350H.

C.J.S. Infants §§ 95, 100 to 107.

#### RESEARCH REFERENCES

2003 Electronic Update

Treatises and Practice Aids

13A Wash. Prac. Series § 110, Sexual Motivation.

13B Wash. Prac. Series § 2507, Practical Considerations.

13B Wash. Prac. Series § 3401, Introduction.

13B Wash. Prac. Series § 3405, Sentencing Reform Act-Overview.

13B Wash. Prac. Series § 3601, Generally.

13B Wash. Prac. Series § 3701, Alternative Conversion-Generally.

13B Wash. Prac. Series § 3707, Sex Offender Sentencing Alternative (Ssosa).

NOTES OF DECISIONS

In general 1

1. In general

Defendant who pleaded guilty to first-degree child molestation was not amenable to Special Sex Offender Sentencing Alternative (SSOSA); defendant had extensive criminal record, lacked financial support, had history of substance abuse, and was not honest about current offense. State v. Oliva (2003) 117 Wash.App. 773, 73 P.3d 1016. Sentencing And Punishment k 1872(1); Sentencing And Punishment k 1878; Sentencing And Punishment k 1884; Sentencing And Punishment k 1885

West's RCWA 9.94A.670, WA ST 9.94A.670  
Current with all 2003 legislation  
Copr. (C) West Group 2003. All rights reserved.

END OF DOCUMENT