

INITIATIVE 936

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 936 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to ensuring tougher sentences for sex offenders by
2 enacting the Jessica's law plus act; amending RCW 9.94A.712; reenacting
3 and amending RCW 9.94A.670; creating new sections; and prescribing
4 penalties.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 Jessica's law plus act.

8 NEW SECTION. **Sec. 2.** Sexual abuse, including the rape and
9 molestation of helpless children and vulnerable persons, is one of the
10 most terrifying and demeaning criminal acts an individual can
11 perpetrate against another person. The personal pain and fear suffered
12 by the innocent victims of sexual abuse, and by their families, create
13 devastating difficulties that often take years, if not a lifetime, to
14 overcome. The grief and loss caused by the sexual abuse of young
15 children and vulnerable persons are severe and the severity of
16 punishment for those who commit such sexual abuse should be
17 commensurate with the terror and trauma they have forced upon their
18 victims, and the victim's family and loved ones. Justice is concerned

1 with enforcing consequences for one's own actions to ensure personal
2 responsibility for such actions. The severity of punishment for those
3 who commit sexual abuse, such as the rape and molestation of a child or
4 a vulnerable person, should be consistent and commensurate with the
5 horrible crimes such perpetrators have imposed upon their victims.
6 Strict penalties for such cruel and humiliating violations of a
7 person's dignity, honor, and well-being are both appropriate and just,
8 will act as a deterrent to others who are inclined to commit such
9 immoral and inhumane crimes, and reflect the will of the majority of
10 the people of this state. The legislature intends to ensure that the
11 sanctions imposed for sexual abuse of a child or a vulnerable person
12 are proportionate to the crime and that the victims of sexual abuse
13 will be better able to lead lives free of fear knowing that the
14 perpetrators of such crimes against them will not be around to harm
15 them, or others, for a long time.

16 **Sec. 3.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
17 as follows:

18 (1) An offender who is not a persistent offender shall be sentenced
19 under this section if the offender:

20 (a) Is convicted of:

21 (i) Rape in the first degree, rape in the second degree, rape of a
22 child in the first degree, child molestation in the first degree, rape
23 of a child in the second degree, or indecent liberties by forcible
24 compulsion;

25 (ii) Any of the following offenses with a finding of sexual
26 motivation: Murder in the first degree, murder in the second degree,
27 homicide by abuse, kidnapping in the first degree, kidnapping in the
28 second degree, assault in the first degree, assault in the second
29 degree, assault of a child in the first degree, or burglary in the
30 first degree; or

31 (iii) An attempt to commit any crime listed in this subsection
32 (1)(a);

33 committed on or after September 1, 2001; or

34 (b) Has a prior conviction for an offense listed in RCW
35 9.94A.030(32)(b), and is convicted of any sex offense which was
36 committed after September 1, 2001.

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

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

5 (3)(a) Upon a finding that the offender is subject to sentencing
6 under this section, the court shall impose a sentence to a maximum term
7 (~~consisting of the statutory maximum sentence for the offense~~) and a
8 minimum term (~~either within the standard sentence range for the~~
9 ~~offense, or outside the standard sentence range pursuant to RCW~~
10 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

11 (b) The maximum term shall consist of the statutory maximum
12 sentence for the offense.

13 (c)(i) Except as provided in (c)(ii) through (iv) of this
14 subsection, the minimum term shall be either within the standard
15 sentence range for the offense, or outside the standard sentence range
16 pursuant to RCW 9.94A.535, if the offender is otherwise eligible for
17 such a sentence.

18 (ii) If the offense that caused the offender to be sentenced under
19 this section was rape of a child in the first degree, rape of a child
20 in the second degree, or child molestation in the first degree, the
21 minimum term shall be either twenty-five years or the maximum of the
22 standard sentence range for the offense, whichever is greater.

23 (iii) If the offense that caused the offender to be sentenced under
24 this section was rape in the first degree, rape in the second degree,
25 indecent liberties by forcible compulsion, or kidnapping in the first
26 degree with sexual motivation, and the victim was under the age of
27 fifteen at the time of the offense, the minimum term shall be either
28 twenty-five years or the maximum of the standard sentence range for the
29 offense, whichever is greater.

30 (iv) If the offense that caused the offender to be sentenced under
31 this section is rape in the first degree, rape in the second degree
32 with forcible compulsion, indecent liberties with forcible compulsion,
33 or kidnapping in the first degree with sexual motivation, and the
34 victim was, at the time of the offense, developmentally disabled,
35 mentally disordered, or a frail elder or vulnerable adult, the minimum
36 sentence shall be either twenty-five years or the maximum of the
37 standard sentence range for the offense, whichever is greater. For
38 purposes of this section, "developmentally disabled," "mentally

1 disordered," and "frail elder or vulnerable adult" have the same
2 meaning as in RCW 9A.44.010.

3 (d) The minimum terms in (c)(ii) through (iv) of this subsection do
4 not apply to a juvenile tried as an adult pursuant to RCW
5 13.04.030(1)(e)(i). The minimum term for such a juvenile shall be
6 imposed under (c)(i) of this subsection.

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

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

16 (6)(a) Unless a condition is waived by the court, the conditions of
17 community custody shall include those provided for in RCW 9.94A.700(4).
18 The conditions may also include those provided for in RCW 9.94A.700(5).
19 The court may also order the offender to participate in rehabilitative
20 programs or otherwise perform affirmative conduct reasonably related to
21 the circumstances of the offense, the offender's risk of reoffending,
22 or the safety of the community, and the department and the board shall
23 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
24 9.95.430.

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

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

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

32 (a) "Family member" means a relative by blood, marriage, or
33 adoption, or a foster parent.

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

37 ~~((b))~~ (c) "Substantial bodily harm" means bodily injury that
38 involves a temporary but substantial disfigurement, or that causes a

1 temporary but substantial loss or impairment of the function of any
2 body part or organ, or that causes a fracture of any body part or
3 organ.

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

9 (2) An offender is eligible for the special sex offender sentencing
10 alternative only if all the following criteria are met:

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

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

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

20 (d) The offender's standard sentence range for the offense includes
21 the possibility of confinement for less than eleven years;

22 (e) The offense did not result in substantial bodily harm to the
23 victim;

24 ~~((e))~~ (f) The offender had ~~((an))~~ a substantial, long-term,
25 established relationship with, or connection to, the victim such that
26 the sole connection with the victim was not the commission of the
27 crime; ~~((and~~

28 ~~— (f) The offender's standard sentence range for the offense includes~~
29 ~~the possibility of confinement for less than eleven years—))~~ (g) The

30 offender has not committed acts constituting sex offenses against
31 multiple victims, regardless of whether the offender was subject to
32 criminal charges for the acts;

33 (h) The testimony of the immediate victim of the crime is material
34 to the case or necessary to the prosecution of the offender;

35 (i) The victim refuses to cooperate in the investigation, or is
36 unwilling, unable, or unavailable to testify;

37 (j) The offender was the immediate victim's family member; and

38 (k) The immediate victim or immediate victim's family agrees to the
39 sentence imposed under this section.

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

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

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

9 (ii) The offender's offense history;

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

12 (iv) The offender's social and employment situation; and

13 (v) Other evaluation measures used.

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

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

20 (i) Frequency and type of contact between offender and therapist;

21 (ii) Specific issues to be addressed in the treatment and
22 description of planned treatment modalities;

23 (iii) Monitoring plans, including any requirements regarding living
24 conditions, lifestyle requirements, and monitoring by family members
25 and others;

26 (iv) Anticipated length of treatment; and

27 (v) Recommended crime-related prohibitions and affirmative
28 conditions, which must include, to the extent known, an identification
29 of specific activities or behaviors that are precursors to the
30 offender's offense cycle, including, but not limited to, activities or
31 behaviors such as viewing or listening to pornography or use of alcohol
32 or controlled substances.

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

1 (4) After receipt of the reports, the court shall consider whether
2 the offender and the community will benefit from use of this
3 alternative, consider whether the alternative is too lenient in light
4 of the extent and circumstances of the offense, consider whether the
5 offender has victims in addition to the victim of the offense, consider
6 whether the offender is amenable to treatment, consider the risk the
7 offender would present to the community, to the victim, or to persons
8 of similar age and circumstances as the victim, and consider the
9 victim's opinion whether the offender should receive a treatment
10 disposition under this section. The court shall give great weight to
11 the victim's opinion whether the offender should receive a treatment
12 disposition under this section. If the sentence imposed is contrary to
13 the victim's opinion, the court shall enter written findings stating
14 its reasons for imposing the treatment disposition. The fact that the
15 offender admits to his or her offense does not, by itself, constitute
16 amenability to treatment. If the court determines that this
17 alternative is appropriate, the court shall then impose a sentence or,
18 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
19 standard sentence range. If the sentence imposed is less than eleven
20 years of confinement, the court may suspend the execution of the
21 sentence and impose the following conditions of suspension:

22 (a) The court shall order the offender to serve a term of
23 confinement of up to twelve months or the maximum term within the
24 standard range, whichever is less. The court may order the offender to
25 serve a term of confinement greater than twelve months or the maximum
26 term within the standard range based on the presence of an aggravating
27 circumstance listed in RCW 9.94A.535(2). In no case shall the term of
28 confinement exceed the statutory maximum sentence for the offense. The
29 court may order the offender to serve all or part of his or her term of
30 confinement in partial confinement. An offender sentenced to a term of
31 confinement under this subsection is not eligible for earned release
32 under RCW 9.92.151 or 9.94A.728.

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

38 (c) The court shall order treatment for any period up to five years
39 in duration. The court, in its discretion, shall order outpatient sex

1 offender treatment or inpatient sex offender treatment, if available.
2 A community mental health center may not be used for such treatment
3 unless it has an appropriate program designed for sex offender
4 treatment. The offender shall not change sex offender treatment
5 providers or treatment conditions without first notifying the
6 prosecutor, the community corrections officer, and the court. If any
7 party or the court objects to a proposed change, the offender shall not
8 change providers or conditions without court approval after a hearing.

9 (d) As conditions of the suspended sentence, the court shall impose
10 specific prohibitions and affirmative conditions relating to the known
11 precursor activities or behaviors identified in the proposed treatment
12 plan under subsection (3)(b)(v) of this section or identified in an
13 annual review under subsection (7)(b) of this section.

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

16 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

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

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

11 (8) At least fourteen days prior to the treatment termination
12 hearing, notice of the hearing shall be given to the victim. The
13 victim shall be given the opportunity to make statements to the court
14 regarding the offender's supervision and treatment. Prior to the
15 treatment termination hearing, the treatment provider and community
16 corrections officer shall submit written reports to the court and
17 parties regarding the offender's compliance with treatment and
18 monitoring requirements, and recommendations regarding termination from
19 treatment, including proposed community custody conditions. The court
20 may order an evaluation regarding the advisability of termination from
21 treatment by a sex offender treatment provider who may not be the same
22 person who treated the offender under subsection (4) of this section or
23 any person who employs, is employed by, or shares profits with the
24 person who treated the offender under subsection (4) of this section
25 unless the court has entered written findings that such evaluation is
26 in the best interest of the victim and that a successful evaluation of
27 the offender would otherwise be impractical. The offender shall pay
28 the cost of the evaluation. At the treatment termination hearing the
29 court may: (a) Modify conditions of community custody, and either (b)
30 terminate treatment, or (c) extend treatment in two-year increments for
31 up to the remaining period of community custody.

32 (9)(a) If a violation of conditions other than a second violation
33 of the prohibitions or affirmative conditions relating to precursor
34 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
35 this section occurs during community custody, the department shall
36 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
37 the violation to the court and recommend revocation of the suspended
38 sentence as provided for in subsections (6) and (8) of this section.

1 (b) If a second violation of the prohibitions or affirmative
2 conditions relating to precursor behaviors or activities imposed under
3 subsection (4)(d) or (7)(b) of this section occurs during community
4 custody, the department shall refer the violation to the court and
5 recommend revocation of the suspended sentence as provided in
6 subsection (10) of this section.

7 (10) The court may revoke the suspended sentence at any time during
8 the period of community custody and order execution of the sentence if:

9 (a) The offender violates the conditions of the suspended sentence, or

10 (b) the court finds that the offender is failing to make satisfactory
11 progress in treatment. All confinement time served during the period
12 of community custody shall be credited to the offender if the suspended
13 sentence is revoked.

14 (11) The offender's sex offender treatment provider may not be the
15 same person who examined the offender under subsection (3) of this
16 section or any person who employs, is employed by, or shares profits
17 with the person who examined the offender under subsection (3) of this
18 section, unless the court has entered written findings that such
19 treatment is in the best interests of the victim and that successful
20 treatment of the offender would otherwise be impractical. Examinations
21 and treatment ordered pursuant to this subsection shall only be
22 conducted by certified sex offender treatment providers or certified
23 affiliate sex offender treatment providers under chapter 18.155 RCW
24 unless the court finds that:

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

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

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

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

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