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HOUSE BILL 2703

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By Representatives O'Brien, Pearson, Ericks, Rodne, Kilmer, Green, Sells, McDonald, P. Sullivan, McCoy, Simpson, Moeller, Morrell, Lantz and Linville; by request of Attorney General

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sex offender sentencing and disposition  
2 alternatives; reenacting and amending RCW 9.94A.670 and 13.40.160; and  
3 prescribing penalties.

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

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

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

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

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

16 (c) "Victim" means any person who has sustained emotional,  
17 psychological, physical, or financial injury to person or property as  
18 a result of the crime charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or guardian  
2 is the perpetrator of the offense.

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

5 (a) The offender has been convicted of a sex offense other than a  
6 violation of RCW 9A.44.050 or a sex offense that is also a serious  
7 violent offense. If the conviction results from a guilty plea, the  
8 offender must, as part of his or her plea of guilty, voluntarily and  
9 affirmatively admit he or she committed all of the elements of the  
10 crime to which the offender is pleading guilty. This alternative is  
11 not available to offenders who plead guilty to the offense charged  
12 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d  
13 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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 offense did not result in substantial bodily harm to the  
21 victim;

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

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

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

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

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

35 (ii) The offender's offense history;

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

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

1 (v) Other evaluation measures used.

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

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

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

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

11 (iii) Monitoring plans, including any requirements regarding living  
12 conditions, lifestyle requirements, and monitoring by family members  
13 and others;

14 (iv) Anticipated length of treatment; and

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

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

27 (4) After receipt of the reports, the court shall consider whether  
28 the offender and the community will benefit from use of this  
29 alternative, consider whether the alternative is too lenient in light  
30 of the extent and circumstances of the offense, consider whether the  
31 offender has victims in addition to the victim of the offense, consider  
32 whether the offender is amenable to treatment, consider the risk the  
33 offender would present to the community, to the victim, or to persons  
34 of similar age and circumstances as the victim, and consider the  
35 victim's opinion whether the offender should receive a treatment  
36 disposition under this section. The court shall give great weight to  
37 the victim's opinion whether the offender should receive a treatment  
38 disposition under this section. If the sentence imposed is contrary to

1 the victim's opinion, the court shall enter written findings stating  
2 its reasons for imposing the treatment disposition. The fact that the  
3 offender admits to his or her offense does not, by itself, constitute  
4 amenability to treatment. If the court determines that this  
5 alternative is appropriate, the court shall then impose a sentence or,  
6 pursuant to RCW 9.94A.712, a minimum term of sentence, within the  
7 standard sentence range. If the sentence imposed is less than eleven  
8 years of confinement, the court may suspend the execution of the  
9 sentence and impose the following conditions of suspension:

10 (a) The court shall order the offender to serve a term of  
11 confinement of up to twelve months or the maximum term within the  
12 standard range, whichever is less. The court may order the offender to  
13 serve a term of confinement greater than twelve months or the maximum  
14 term within the standard range based on the presence of an aggravating  
15 circumstance listed in RCW 9.94A.535(~~(+2)~~) (3). In no case shall the  
16 term of confinement exceed the statutory maximum sentence for the  
17 offense. The court may order the offender to serve all or part of his  
18 or her term of confinement in partial confinement. An offender  
19 sentenced to a term of confinement under this subsection is not  
20 eligible for earned release under RCW 9.92.151 or 9.94A.728.

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

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

36 (d) As conditions of the suspended sentence, the court shall impose  
37 specific prohibitions and affirmative conditions relating to the known

1 precursor activities or behaviors identified in the proposed treatment  
2 plan under subsection (3)(b)(v) of this section or identified in an  
3 annual review under subsection (7)(b) of this section.

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

6 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

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

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

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

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

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

35 (10) The court may revoke the suspended sentence at any time during  
36 the period of community custody and order execution of the sentence if:  
37 (a) The offender violates the conditions of the suspended sentence, or  
38 (b) the court finds that the offender is failing to make satisfactory

1 progress in treatment. All confinement time served during the period  
2 of community custody shall be credited to the offender if the suspended  
3 sentence is revoked.

4 (11) The offender's sex offender treatment provider may not be the  
5 same person who examined the offender under subsection (3) of this  
6 section or any person who employs, is employed by, or shares profits  
7 with the person who examined the offender under subsection (3) of this  
8 section, unless the court has entered written findings that such  
9 treatment is in the best interests of the victim and that successful  
10 treatment of the offender would otherwise be impractical. Examinations  
11 and treatment ordered pursuant to this subsection shall only be  
12 conducted by certified sex offender treatment providers or certified  
13 affiliate sex offender treatment providers under chapter 18.155 RCW  
14 unless the court finds that:

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

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

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

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

26 **Sec. 2.** RCW 13.40.160 and 2004 c 120 s 4 and 2004 c 38 s 11 are  
27 each reenacted and amended to read as follows:

28 (1) The standard range disposition for a juvenile adjudicated of an  
29 offense is determined according to RCW 13.40.0357.

30 (a) When the court sentences an offender to a local sanction as  
31 provided in RCW 13.40.0357 option A, the court shall impose a  
32 determinate disposition within the standard ranges, except as provided  
33 in subsection (2), (3), (4), (5), or (6) of this section. The  
34 disposition may be comprised of one or more local sanctions.

35 (b) When the court sentences an offender to a standard range as  
36 provided in RCW 13.40.0357 option A that includes a term of confinement

1 exceeding thirty days, commitment shall be to the department for the  
2 standard range of confinement, except as provided in subsection (2),  
3 (3), (4), (5), or (6) of this section.

4 (2) If the court concludes, and enters reasons for its conclusion,  
5 that disposition within the standard range would effectuate a manifest  
6 injustice the court shall impose a disposition outside the standard  
7 range, as indicated in option D of RCW 13.40.0357. The court's finding  
8 of manifest injustice shall be supported by clear and convincing  
9 evidence.

10 A disposition outside the standard range shall be determinate and  
11 shall be comprised of confinement or community supervision, or a  
12 combination thereof. When a judge finds a manifest injustice and  
13 imposes a sentence of confinement exceeding thirty days, the court  
14 shall sentence the juvenile to a maximum term, and the provisions of  
15 RCW 13.40.030(2) shall be used to determine the range. A disposition  
16 outside the standard range is appealable under RCW 13.40.230 by the  
17 state or the respondent. A disposition within the standard range is  
18 not appealable under RCW 13.40.230.

19 (3) When a juvenile offender is found to have committed a sex  
20 offense, other than a sex offense that is also a serious violent  
21 offense as defined by RCW 9.94A.030, and has no history of a prior sex  
22 offense, the court, on its own motion or the motion of the state or the  
23 respondent, may order an examination to determine whether the  
24 respondent is amenable to treatment. However, the court shall not  
25 order such an examination and may not order the disposition outlined in  
26 this section unless, if the adjudication of guilt was entered under a  
27 plea, the juvenile offender voluntarily and affirmatively admitted he  
28 or she committed all of the elements of the crime to which the juvenile  
29 offender is pleading guilty. This disposition is not available to  
30 juvenile offenders who plead guilty to the offense charged under *North*  
31 *Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)  
32 and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976).

33 The report of the examination shall include at a minimum the  
34 following: The respondent's version of the facts and the official  
35 version of the facts, the respondent's offense history, an assessment  
36 of problems in addition to alleged deviant behaviors, the respondent's  
37 social, educational, and employment situation, and other evaluation



1 measures used. The report shall set forth the sources of the  
2 evaluator's information.

3 The examiner shall assess and report regarding the respondent's  
4 amenability to treatment and relative risk to the community. A  
5 proposed treatment plan shall be provided and shall include, at a  
6 minimum:

7 (a)(i) Frequency and type of contact between the offender and  
8 therapist;

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

11 (iii) Monitoring plans, including any requirements regarding living  
12 conditions, lifestyle requirements, and monitoring by family members,  
13 legal guardians, or others;

14 (iv) Anticipated length of treatment; and

15 (v) Recommended crime-related prohibitions.

16 The court on its own motion may order, or on a motion by the state  
17 shall order, a second examination regarding the offender's amenability  
18 to treatment. The evaluator shall be selected by the party making the  
19 motion. The defendant shall pay the cost of any second examination  
20 ordered unless the court finds the defendant to be indigent in which  
21 case the state shall pay the cost.

22 After receipt of reports of the examination, the court shall then  
23 consider whether the offender and the community will benefit from use  
24 of this special sex offender disposition alternative and consider the  
25 victim's opinion whether the offender should receive a treatment  
26 disposition under this section. If the court determines that this  
27 special sex offender disposition alternative is appropriate, then the  
28 court shall impose a determinate disposition within the standard range  
29 for the offense, or if the court concludes, and enters reasons for its  
30 conclusions, that such disposition would cause a manifest injustice,  
31 the court shall impose a disposition under option D, and the court may  
32 suspend the execution of the disposition and place the offender on  
33 community supervision for at least two years. As a condition of the  
34 suspended disposition, the court may impose the conditions of community  
35 supervision and other conditions, including up to thirty days of  
36 confinement and requirements that the offender do any one or more of  
37 the following:

- 1 (b)(i) Devote time to a specific education, employment, or  
2 occupation;
- 3 (ii) Undergo available outpatient sex offender treatment for up to  
4 two years, or inpatient sex offender treatment not to exceed the  
5 standard range of confinement for that offense. A community mental  
6 health center may not be used for such treatment unless it has an  
7 appropriate program designed for sex offender treatment. The  
8 respondent shall not change sex offender treatment providers or  
9 treatment conditions without first notifying the prosecutor, the  
10 probation counselor, and the court, and shall not change providers  
11 without court approval after a hearing if the prosecutor or probation  
12 counselor object to the change;
- 13 (iii) Remain within prescribed geographical boundaries and notify  
14 the court or the probation counselor prior to any change in the  
15 offender's address, educational program, or employment;
- 16 (iv) Report to the prosecutor and the probation counselor prior to  
17 any change in a sex offender treatment provider. This change shall  
18 have prior approval by the court;
- 19 (v) Report as directed to the court and a probation counselor;
- 20 (vi) Pay all court-ordered legal financial obligations, perform  
21 community restitution, or any combination thereof;
- 22 (vii) Make restitution to the victim for the cost of any counseling  
23 reasonably related to the offense;
- 24 (viii) Comply with the conditions of any court-ordered probation  
25 bond; or
- 26 (ix) The court shall order that the offender shall not attend the  
27 public or approved private elementary, middle, or high school attended  
28 by the victim or the victim's siblings. The parents or legal guardians  
29 of the offender are responsible for transportation or other costs  
30 associated with the offender's change of school that would otherwise be  
31 paid by the school district. The court shall send notice of the  
32 disposition and restriction on attending the same school as the victim  
33 or victim's siblings to the public or approved private school the  
34 juvenile will attend, if known, or if unknown, to the approved private  
35 schools and the public school district board of directors of the  
36 district in which the juvenile resides or intends to reside. This  
37 notice must be sent at the earliest possible date but not later than  
38 ten calendar days after entry of the disposition.

1 The sex offender treatment provider shall submit quarterly reports  
2 on the respondent's progress in treatment to the court and the parties.  
3 The reports shall reference the treatment plan and include at a minimum  
4 the following: Dates of attendance, respondent's compliance with  
5 requirements, treatment activities, the respondent's relative progress  
6 in treatment, and any other material specified by the court at the time  
7 of the disposition.

8 At the time of the disposition, the court may set treatment review  
9 hearings as the court considers appropriate.

10 Except as provided in this subsection (3), after July 1, 1991,  
11 examinations and treatment ordered pursuant to this subsection shall  
12 only be conducted by certified sex offender treatment providers or  
13 certified affiliate sex offender treatment providers under chapter  
14 18.155 RCW. A sex offender therapist who examines or treats a juvenile  
15 sex offender pursuant to this subsection does not have to be certified  
16 by the department of health pursuant to chapter 18.155 RCW if the court  
17 finds that: (A) The offender has already moved to another state or  
18 plans to move to another state for reasons other than circumventing the  
19 certification requirements; (B) no certified sex offender treatment  
20 providers or certified affiliate sex offender treatment providers are  
21 available for treatment within a reasonable geographical distance of  
22 the offender's home; and (C) the evaluation and treatment plan comply  
23 with this subsection (3) and the rules adopted by the department of  
24 health.

25 If the offender violates any condition of the disposition or the  
26 court finds that the respondent is failing to make satisfactory  
27 progress in treatment, the court may revoke the suspension and order  
28 execution of the disposition or the court may impose a penalty of up to  
29 thirty days' confinement for violating conditions of the disposition.  
30 The court may order both execution of the disposition and up to thirty  
31 days' confinement for the violation of the conditions of the  
32 disposition. The court shall give credit for any confinement time  
33 previously served if that confinement was for the offense for which the  
34 suspension is being revoked.

35 For purposes of this section, "victim" means any person who has  
36 sustained emotional, psychological, physical, or financial injury to  
37 person or property as a direct result of the crime charged. "Victim"

1 may also include a known parent or guardian of a victim who is a minor  
2 child unless the parent or guardian is the perpetrator of the offense.

3 A disposition entered under this subsection (3) is not appealable  
4 under RCW 13.40.230.

5 (4) If the juvenile offender is subject to a standard range  
6 disposition of local sanctions or 15 to 36 weeks of confinement and has  
7 not committed an A- or B+ offense, the court may impose the disposition  
8 alternative under RCW 13.40.165.

9 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of  
10 confinement, the court may impose the disposition alternative under RCW  
11 13.40.167.

12 (6) When the offender is subject to a standard range commitment of  
13 15 to 36 weeks and is ineligible for a suspended disposition  
14 alternative, a manifest injustice disposition below the standard range,  
15 special sex offender disposition alternative, chemical dependency  
16 disposition alternative, or mental health disposition alternative, the  
17 court in a county with a pilot program under RCW 13.40.169 may impose  
18 the disposition alternative under RCW 13.40.169.

19 (7) RCW 13.40.193 shall govern the disposition of any juvenile  
20 adjudicated of possessing a firearm in violation of RCW  
21 9.41.040(2)(a)(iii) or any crime in which a special finding is entered  
22 that the juvenile was armed with a firearm.

23 (8) Whenever a juvenile offender is entitled to credit for time  
24 spent in detention prior to a dispositional order, the dispositional  
25 order shall specifically state the number of days of credit for time  
26 served.

27 (9) Except as provided under subsection (3), (4), (5), or (6) of  
28 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the  
29 court shall not suspend or defer the imposition or the execution of the  
30 disposition.

31 (10) In no case shall the term of confinement imposed by the court  
32 at disposition exceed that to which an adult could be subjected for the  
33 same offense.

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