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HOUSE BILL 1974

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State of Washington

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By Representatives Pearson, McDonald, Strow, Haler, Sump, Ericksen, Orcutt, Ahern, Bailey, Kristiansen, Hinkle, Roach, Armstrong, Hailey, Skinner, Buri, Rodne, DeBolt, Schindler, Jarrett, Priest, Curtis, Ross, Kretz, Anderson, Hankins, Warnick, McCune, Alexander, Walsh, Dunn, Condotta, Crouse, Chandler, Newhouse and Campbell

Read first time 02/02/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to limiting special sex offender sentencing  
2 alternatives to the immediate victim's family members; and amending RCW  
3 9.94A.670.

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

5 **Sec. 1.** RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read  
6 as follows:

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

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

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

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

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

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

8        (a) The offender has been convicted of a sex offense other than a  
9 violation of RCW 9A.44.050 or a sex offense that is also a serious  
10 violent offense. If the conviction results from a guilty plea, the  
11 offender must, as part of his or her plea of guilty, voluntarily and  
12 affirmatively admit he or she committed all of the elements of the  
13 crime to which the offender is pleading guilty. This alternative is  
14 not available to offenders who plead guilty to the offense charged  
15 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d  
16 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

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

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

25        (e) The offender ~~((had an established relationship with, or  
26 connection to, the victim such that the sole connection with the victim  
27 was not the commission of the crime))~~ has not committed multiple acts  
28 constituting sex offenses against the same victim, regardless of  
29 whether the offender was subject to criminal charges for the acts;  
30 ~~((and))~~

31        (f) The offender is the immediate victim's family member;

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

34        (h) The immediate victim refuses to cooperate in the investigation,  
35 or is unwilling, unable, or unavailable to testify;

36        (i) The immediate victim or immediate victim's family agrees to the  
37 sentence imposed under this section; and

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

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

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

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

11       (ii) The offender's offense history;

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

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

15       (v) Other evaluation measures used.

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

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

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

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

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

28       (iv) Anticipated length of treatment; and

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

35       (c) The court on its own motion may order, or on a motion by the  
36 state shall order, a second examination regarding the offender's  
37 amenability to treatment. The examiner shall be selected by the party

1 making the motion. The offender shall pay the cost of any second  
2 examination ordered unless the court finds the defendant to be indigent  
3 in which case the state shall pay the cost.

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

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

36 (b) The court shall place the offender on community custody for the  
37 length of the suspended sentence, the length of the maximum term

1 imposed pursuant to RCW 9.94A.712, or three years, whichever is  
2 greater, and require the offender to comply with any conditions imposed  
3 by the department under RCW 9.94A.720.

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

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

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

21 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

37 (7)(a) The sex offender treatment provider shall submit quarterly  
38 reports on the offender's progress in treatment to the court and the

1 parties. The report shall reference the treatment plan and include at  
2 a minimum the following: Dates of attendance, offender's compliance  
3 with requirements, treatment activities, the offender's relative  
4 progress in treatment, and any other material specified by the court at  
5 sentencing.

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

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

37 (9)(a) If a violation of conditions other than a second violation  
38 of the prohibitions or affirmative conditions relating to precursor

1 behaviors or activities imposed under subsection (4)(d) or (7)(b) of  
2 this section occurs during community custody, the department shall  
3 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer  
4 the violation to the court and recommend revocation of the suspended  
5 sentence as provided for in subsections (6) and (8) of this section.

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

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

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

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

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

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

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

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