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**SUBSTITUTE SENATE BILL 5351**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senator Darneille)

READ FIRST TIME 02/14/19.

1 AN ACT Relating to juvenile sex offense registration waivers  
2 under the special sexual offender disposition alternative; and  
3 amending RCW 13.40.162 and 9A.44.140.

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

5 **Sec. 1.** RCW 13.40.162 and 2011 c 338 s 3 are each amended to  
6 read as follows:

7 (1) A juvenile offender is eligible for the special sex offender  
8 disposition alternative when:

9 (a) The offender is found to have committed a sex offense, other  
10 than a sex offense that is also a serious violent offense as defined  
11 by RCW 9.94A.030, and the offender has no history of a prior sex  
12 offense; ((and)) or

13 (b) The offender is found to have committed assault in the fourth  
14 degree with sexual motivation, and the offender has no history of a  
15 prior sex offense.

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

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

- 1 (i) The respondent's version of the facts and the official  
2 version of the facts;  
3 (ii) The respondent's offense history;  
4 (iii) An assessment of problems in addition to alleged deviant  
5 behaviors;  
6 (iv) The respondent's social, educational, and employment  
7 situation;  
8 (v) Other evaluation measures used.

9 The report shall set forth the sources of the evaluator's  
10 information.

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

- 15 (i) The frequency and type of contact between the offender and  
16 therapist;  
17 (ii) Specific issues to be addressed in the treatment and  
18 description of planned treatment modalities;  
19 (iii) Monitoring plans, including any requirements regarding  
20 living conditions, lifestyle requirements, and monitoring by family  
21 members, legal guardians, or others;  
22 (iv) Anticipated length of treatment; and  
23 (v) Recommended crime-related prohibitions.

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

30 (3) After receipt of reports of the examination, the court shall  
31 then consider whether the offender and the community will benefit  
32 from use of this special sex offender disposition alternative and  
33 consider the victim's opinion whether the offender should receive a  
34 treatment disposition under this section. If the court determines  
35 that this special sex offender disposition alternative is  
36 appropriate, then the court shall impose a determinate disposition  
37 within the standard range for the offense, or if the court concludes,  
38 and enters reasons for its conclusions, that such disposition would  
39 cause a manifest injustice, the court shall impose a disposition  
40 under option D, and the court may suspend the execution of the

1 disposition and place the offender on community supervision for at  
2 least two years.

3 (4) As a condition of the suspended disposition, the court may  
4 impose the conditions of community supervision and other conditions,  
5 including up to thirty days of confinement and requirements that the  
6 offender do any one or more of the following:

7 (a) Devote time to a specific education, employment, or  
8 occupation;

9 (b) Undergo available outpatient sex offender treatment for up to  
10 two years, or inpatient sex offender treatment not to exceed the  
11 standard range of confinement for that offense. A community mental  
12 health center may not be used for such treatment unless it has an  
13 appropriate program designed for sex offender treatment. The  
14 respondent shall not change sex offender treatment providers or  
15 treatment conditions without first notifying the prosecutor, the  
16 probation counselor, and the court, and shall not change providers  
17 without court approval after a hearing if the prosecutor or probation  
18 counselor object to the change;

19 (c) Remain within prescribed geographical boundaries and notify  
20 the court or the probation counselor prior to any change in the  
21 offender's address, educational program, or employment;

22 (d) Report to the prosecutor and the probation counselor prior to  
23 any change in a sex offender treatment provider. This change shall  
24 have prior approval by the court;

25 (e) Report as directed to the court and a probation counselor;

26 (f) Pay all court-ordered legal financial obligations, perform  
27 community restitution, or any combination thereof;

28 (g) Make restitution to the victim for the cost of any counseling  
29 reasonably related to the offense; or

30 (h) Comply with the conditions of any court-ordered probation  
31 bond.

32 (5) If the court orders twenty-four hour, continuous monitoring  
33 of the offender while on probation, the court shall include the basis  
34 for this condition in its findings.

35 (6) (a) The court must order the offender not to attend the public  
36 or approved private elementary, middle, or high school attended by  
37 the victim or the victim's siblings.

38 (b) The parents or legal guardians of the offender are  
39 responsible for transportation or other costs associated with the

1 offender's change of school that would otherwise be paid by the  
2 school district.

3 (c) The court shall send notice of the disposition and  
4 restriction on attending the same school as the victim or victim's  
5 siblings to the public or approved private school the juvenile will  
6 attend, if known, or if unknown, to the approved private schools and  
7 the public school district board of directors of the district in  
8 which the juvenile resides or intends to reside. This notice must be  
9 sent at the earliest possible date but not later than ten calendar  
10 days after entry of the disposition.

11 (7) (a) Upon entry of a suspended disposition under this section,  
12 if the juvenile is required to register as a sex offender under RCW  
13 9A.44.140, the court may suspend the juvenile's requirement to  
14 register as a sex offender under the following circumstances:

15 (i) The juvenile is not charged with a violent offense under RCW  
16 9.94A.030;

17 (ii) The juvenile is at a low risk to reoffend based on the  
18 examination ordered under subsection (2) of this section; and

19 (iii) The interests of the juvenile and the community weigh in  
20 favor of suspending the requirement to register as a sex offender.

21 (b) If the court suspends the juvenile's requirement to register  
22 as a sex offender under (a) of this subsection, and the court  
23 subsequently revokes the suspended disposition, the court shall order  
24 the juvenile to register as a sex offender.

25 (c) At the end of the supervision ordered under this disposition  
26 alternative, if the juvenile has registered as a sex offender, the  
27 court may terminate sex offender registration provided the court  
28 finds:

29 (i) The juvenile has met all the statutory requirements and  
30 completed all the terms of supervision;

31 (ii) The suspension ordered under this section has not been  
32 revoked;

33 (iii) The juvenile is at low risk to reoffend based on the  
34 examination ordered under subsection (2) of this section; and

35 (iv) By a preponderance of evidence, sufficient reason exists to  
36 remove the juvenile from the central registry of sex offenders after  
37 considering the circumstances of the case.

38 (d) Subsection (7) (a) of this section does not apply to any  
39 juvenile no longer required to register as a sex offender under RCW  
40 9A.44.141, 9A.44.142, or 9A.44.143.

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

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

10        (c) Except as provided in this subsection, examinations and  
11 treatment ordered pursuant to this subsection shall (~~only~~) be  
12 conducted by qualified professionals, certified sex offender  
13 treatment providers, or certified affiliate sex offender treatment  
14 providers under chapter 18.155 RCW.

15        (d) A sex offender therapist who examines or treats a juvenile  
16 sex offender pursuant to this subsection does not have to be  
17 certified by the department of health pursuant to chapter 18.155 RCW  
18 if the therapist is a professional licensed under chapter 18.225 or  
19 18.83 RCW and the treatment employed is evidence-based, or if the  
20 court finds that: (i) The offender has already moved to another state  
21 or plans to move to another state for reasons other than  
22 circumventing the certification requirements; (ii) no certified sex  
23 offender treatment providers or certified affiliate sex offender  
24 treatment providers are available for treatment within a reasonable  
25 geographical distance of the offender's home; and (iii) the  
26 evaluation and treatment plan comply with this subsection and the  
27 rules adopted by the department of health.

28        (~~(8)~~) (9)(a) If the offender violates any condition of the  
29 disposition or the court finds that the respondent is failing to make  
30 satisfactory progress in treatment, the court may revoke the  
31 suspension and order execution of the disposition or the court may  
32 impose a penalty of up to thirty days confinement for violating  
33 conditions of the disposition.

34        (b) The court may order both execution of the disposition and up  
35 to thirty days confinement for the violation of the conditions of the  
36 disposition.

37        (c) The court shall give credit for any confinement time  
38 previously served if that confinement was for the offense for which  
39 the suspension is being revoked.

1       (~~(9)~~) (10) For purposes of this section, "victim" means any  
2 person who has sustained emotional, psychological, physical, or  
3 financial injury to person or property as a direct result of the  
4 crime charged. "Victim" may also include a known parent or guardian  
5 of a victim who is a minor child unless the parent or guardian is the  
6 perpetrator of the offense.

7       (~~(10)~~) (11) A disposition entered under this section is not  
8 appealable under RCW 13.40.230.

9       **Sec. 2.** RCW 9A.44.140 and 2015 c 261 s 6 are each amended to  
10 read as follows:

11       The duty to register under RCW 9A.44.130 shall continue for the  
12 duration provided in this section.

13       (1) For a person convicted in this state of a class A felony, or  
14 a person convicted of any sex offense or kidnapping offense who has  
15 one or more prior convictions for a sex offense or kidnapping  
16 offense, the duty to register shall continue indefinitely.

17       (2) For a person convicted in this state of a class B felony who  
18 does not have one or more prior convictions for a sex offense or  
19 kidnapping offense, the duty to register shall end fifteen years  
20 after the last date of release from confinement, if any, (including  
21 full-time residential treatment) pursuant to the conviction, or entry  
22 of the judgment and sentence, if the person has spent fifteen  
23 consecutive years in the community without being convicted of a  
24 disqualifying offense during that time period.

25       (3) For a person convicted in this state of a class C felony, a  
26 violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation,  
27 or conspiracy to commit a class C felony, and the person does not  
28 have one or more prior convictions for a sex offense or kidnapping  
29 offense, the duty to register shall end ten years after the last date  
30 of release from confinement, if any, (including full-time residential  
31 treatment) pursuant to the conviction, or entry of the judgment and  
32 sentence, if the person has spent ten consecutive years in the  
33 community without being convicted of a disqualifying offense during  
34 that time period.

35       (4) Except as provided in RCW 9A.44.142, for a person required to  
36 register for a federal, tribal, or out-of-state conviction, the duty  
37 to register shall continue indefinitely.

1           (5) For a person who is or has been determined to be a sexually  
2 violent predator pursuant to chapter 71.09 RCW, the duty to register  
3 shall continue for the person's lifetime.

4           (6) Nothing in this section prevents a person from being relieved  
5 of the duty to register under RCW 9A.44.142 (~~and~~), 9A.44.143, and  
6 13.40.162.

7           (7) Nothing in RCW 9.94A.637 relating to discharge of an offender  
8 shall be construed as operating to relieve the offender of his or her  
9 duty to register pursuant to RCW 9A.44.130.

10          (8) For purposes of determining whether a person has been  
11 convicted of more than one sex offense, failure to register as a sex  
12 offender or kidnapping offender is not a sex or kidnapping offense.

13          (9) The provisions of this section and RCW 9A.44.141 through  
14 9A.44.143 apply equally to a person who has been found not guilty by  
15 reason of insanity under chapter 10.77 RCW of a sex offense or  
16 kidnapping offense.

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