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SENATE BILL 5351

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State of Washington

66th Legislature

2019 Regular Session

By Senator Darneille

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) If required by RCW 9A.44.140, upon adjudication of the  
12 offense for which this disposition alternative is considered, the  
13 court must order the offender to register as a sex offender. Unless  
14 the duty to register is removed under (b) of this subsection, the  
15 offender must continue to register as a sex offender for the  
16 statutory limits provided by chapter 9A.44 RCW.

17 (b) At the end of supervision ordered under this disposition  
18 alternative, the court may terminate sex offender registration  
19 provided the court finds:

20 (i) The offender has met all the statutory requirements and  
21 completed all the terms of supervision;

22 (ii) The suspension ordered under this section has not been  
23 revoked;

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

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

29 (c) Subsection (7) (a) of this section does not apply to any  
30 juvenile no longer required to register as a sex offender under RCW  
31 9A.44.141, 9A.44.142, or 9A.44.143.

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

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

1 (c) Except as provided in this subsection, examinations and  
2 treatment ordered pursuant to this subsection shall only be conducted  
3 by certified sex offender treatment providers or certified affiliate  
4 sex offender treatment providers under chapter 18.155 RCW.

5 (d) A sex offender therapist who examines or treats a juvenile  
6 sex offender pursuant to this subsection does not have to be  
7 certified by the department of health pursuant to chapter 18.155 RCW  
8 if the court finds that: (i) The offender has already moved to  
9 another state or plans to move to another state for reasons other  
10 than circumventing the certification requirements; (ii) no certified  
11 sex offender treatment providers or certified affiliate sex offender  
12 treatment providers are available for treatment within a reasonable  
13 geographical distance of the offender's home; and (iii) the  
14 evaluation and treatment plan comply with this subsection and the  
15 rules adopted by the department of health.

16 ~~((+8))~~ (9) (a) If the offender violates any condition of the  
17 disposition or the court finds that the respondent is failing to make  
18 satisfactory progress in treatment, the court may revoke the  
19 suspension and order execution of the disposition or the court may  
20 impose a penalty of up to thirty days confinement for violating  
21 conditions of the disposition.

22 (b) The court may order both execution of the disposition and up  
23 to thirty days confinement for the violation of the conditions of the  
24 disposition.

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

28 ~~((+9))~~ (10) For purposes of this section, "victim" means any  
29 person who has sustained emotional, psychological, physical, or  
30 financial injury to person or property as a direct result of the  
31 crime charged. "Victim" may also include a known parent or guardian  
32 of a victim who is a minor child unless the parent or guardian is the  
33 perpetrator of the offense.

34 ~~((+10))~~ (11) A disposition entered under this section is not  
35 appealable under RCW 13.40.230.

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

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

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

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

13 (3) For a person convicted in this state of a class C felony, a  
14 violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation,  
15 or conspiracy to commit a class C felony, and the person does not  
16 have one or more prior convictions for a sex offense or kidnapping  
17 offense, the duty to register shall end ten years after the last date  
18 of release from confinement, if any, (including full-time residential  
19 treatment) pursuant to the conviction, or entry of the judgment and  
20 sentence, if the person has spent ten consecutive years in the  
21 community without being convicted of a disqualifying offense during  
22 that time period.

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

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

29 (6) Nothing in this section prevents a person from being relieved  
30 of the duty to register under RCW 9A.44.142 (~~and~~), 9A.44.143, and  
31 13.40.162.

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

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

38 (9) The provisions of this section and RCW 9A.44.141 through  
39 9A.44.143 apply equally to a person who has been found not guilty by

1 reason of insanity under chapter 10.77 RCW of a sex offense or  
2 kidnapping offense.

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