
SENATE BILL 6227

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By Senators Kohl, Long, Fairley, Fraser, Thibaudeau, Franklin, Rasmussen, Oke and McAuliffe

Read first time 01/09/96. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to supervision of sex offenders; and amending RCW
2 72.09.340 and 9.94A.120.

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

4 **Sec. 1.** RCW 72.09.340 and 1990 c 3 s 708 are each amended to read
5 as follows:

6 (1) In making all discretionary decisions regarding release plans
7 for and supervision of (~~sexually violent~~) sex offenders, the
8 department of corrections shall set priorities and make decisions based
9 on an assessment of public safety risks (~~rather than the legal~~
10 ~~category of the sentences~~)).

11 (2) The department is authorized to reject a sex offender's
12 proposed release address if the department determines that a minor
13 victim or child of similar age or circumstance as a previous victim
14 resides at the proposed address and may be put at risk by the
15 offender's residence at the address.

16 (3) The department shall, no later than September 1, 1996,
17 implement a policy governing the department's evaluation and approval
18 of release plans for sex offenders. The policy shall require that, at
19 a minimum:

1 (a) When a sex offender's proposed residence includes a minor
2 victim or a child of similar age or circumstance as a previous victim,
3 the department shall notify child protective services and provide all
4 necessary and relevant information to assist child protective services
5 in its investigation;

6 (b) When the department has reasonable cause to believe that a sex
7 offender may pose a safety risk to a specific individual or class of
8 individuals, the department shall petition the court to impose an order
9 as provided in RCW 9.94A.120(18) and shall provide recommendations for
10 the terms and conditions of the order; and

11 (c) A formal process be established by which victims, witnesses,
12 and other interested persons may provide information and comments to
13 the department on potential safety risks to specific individuals or
14 classes of individuals posed by the approval of an offender's proposed
15 residence or release plan.

16 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
17 as follows:

18 When a person is convicted of a felony, the court shall impose
19 punishment as provided in this section.

20 (1) Except as authorized in subsections (2), (4), (5), (6), and (8)
21 of this section, the court shall impose a sentence within the sentence
22 range for the offense.

23 (2) The court may impose a sentence outside the standard sentence
24 range for that offense if it finds, considering the purpose of this
25 chapter, that there are substantial and compelling reasons justifying
26 an exceptional sentence.

27 (3) Whenever a sentence outside the standard range is imposed, the
28 court shall set forth the reasons for its decision in written findings
29 of fact and conclusions of law. A sentence outside the standard range
30 shall be a determinate sentence.

31 (4) A persistent offender shall be sentenced to a term of total
32 confinement for life without the possibility of parole or, when
33 authorized by RCW 10.95.030 for the crime of aggravated murder in the
34 first degree, sentenced to death, notwithstanding the maximum sentence
35 under any other law. An offender convicted of the crime of murder in
36 the first degree shall be sentenced to a term of total confinement not
37 less than twenty years. An offender convicted of the crime of assault
38 in the first degree or assault of a child in the first degree where the

1 offender used force or means likely to result in death or intended to
2 kill the victim shall be sentenced to a term of total confinement not
3 less than five years. An offender convicted of the crime of rape in
4 the first degree shall be sentenced to a term of total confinement not
5 less than five years. The foregoing minimum terms of total confinement
6 are mandatory and shall not be varied or modified as provided in
7 subsection (2) of this section. In addition, all offenders subject to
8 the provisions of this subsection shall not be eligible for community
9 custody, earned early release time, furlough, home detention, partial
10 confinement, work crew, work release, or any other form of early
11 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
12 or any other form of authorized leave of absence from the correctional
13 facility while not in the direct custody of a corrections officer or
14 officers during such minimum terms of total confinement except in the
15 case of an offender in need of emergency medical treatment or for the
16 purpose of commitment to an inpatient treatment facility in the case of
17 an offender convicted of the crime of rape in the first degree.

18 (5) In sentencing a first-time offender the court may waive the
19 imposition of a sentence within the sentence range and impose a
20 sentence which may include up to ninety days of confinement in a
21 facility operated or utilized under contract by the county and a
22 requirement that the offender refrain from committing new offenses.
23 The sentence may also include up to two years of community supervision,
24 which, in addition to crime-related prohibitions, may include
25 requirements that the offender perform any one or more of the
26 following:

27 (a) Devote time to a specific employment or occupation;

28 (b) Undergo available outpatient treatment for up to two years, or
29 inpatient treatment not to exceed the standard range of confinement for
30 that offense;

31 (c) Pursue a prescribed, secular course of study or vocational
32 training;

33 (d) Remain within prescribed geographical boundaries and notify the
34 court or the community corrections officer prior to any change in the
35 offender's address or employment;

36 (e) Report as directed to the court and a community corrections
37 officer; or

38 (f) Pay all court-ordered legal financial obligations as provided
39 in RCW 9.94A.030 and/or perform community service work.

1 (6)(a) An offender is eligible for the special drug offender
2 sentencing alternative if:

3 (i) The offender is convicted of the manufacture, delivery, or
4 possession with intent to manufacture or deliver a controlled substance
5 classified in Schedule I or II that is a narcotic drug or a felony that
6 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes,
8 and the violation does not involve a sentence enhancement under RCW
9 9.94A.310(~~(+3)~~) (4);

10 (ii) The offender has no prior convictions for a felony in this
11 state, another state, or the United States; and

12 (iii) The offense involved only a small quantity of the particular
13 controlled substance as determined by the judge upon consideration of
14 such factors as the weight, purity, packaging, sale price, and street
15 value of the controlled substance.

16 (b) If the midpoint of the standard range is greater than one year
17 and the sentencing judge determines that the offender is eligible for
18 this option and that the offender and the community will benefit from
19 the use of the special drug offender sentencing alternative, the judge
20 may waive imposition of a sentence within the standard range and impose
21 a sentence that must include a period of total confinement in a state
22 facility for one-half of the midpoint of the standard range. During
23 incarceration in the state facility, offenders sentenced under this
24 subsection shall undergo a comprehensive substance abuse assessment and
25 receive, within available resources, treatment services appropriate for
26 the offender. The treatment services shall be designed by the division
27 of alcohol and substance abuse of the department of social and health
28 services, in cooperation with the department of corrections. If the
29 midpoint of the standard range is twenty-four months or less, no more
30 than three months of the sentence may be served in a work release
31 status. The court shall also impose one year of concurrent community
32 custody and community supervision that must include appropriate
33 outpatient substance abuse treatment, crime-related prohibitions
34 including a condition not to use illegal controlled substances, and a
35 requirement to submit to urinalysis or other testing to monitor that
36 status. The court may require that the monitoring for controlled
37 substances be conducted by the department or by a treatment
38 (~~alternative[s]~~) alternatives to street crime program or a comparable
39 court or agency-referred program. The offender may be required to pay

1 thirty dollars per month while on community custody to offset the cost
2 of monitoring. In addition, the court shall impose three or more of
3 the following conditions:

4 (i) Devote time to a specific employment or training;

5 (ii) Remain within prescribed geographical boundaries and notify
6 the court or the community corrections officer before any change in the
7 offender's address or employment;

8 (iii) Report as directed to a community corrections officer;

9 (iv) Pay all court-ordered legal financial obligations;

10 (v) Perform community service work;

11 (vi) Stay out of areas designated by the sentencing judge.

12 (c) If the offender violates any of the sentence conditions in (b)
13 of this subsection, the department shall impose sanctions
14 administratively, with notice to the prosecuting attorney and the
15 sentencing court. Upon motion of the court or the prosecuting
16 attorney, a violation hearing shall be held by the court. If the court
17 finds that conditions have been willfully violated, the court may
18 impose confinement consisting of up to the remaining one-half of the
19 midpoint of the standard range. All total confinement served during
20 the period of community custody shall be credited to the offender,
21 regardless of whether the total confinement is served as a result of
22 the original sentence, as a result of a sanction imposed by the
23 department, or as a result of a violation found by the court. The term
24 of community supervision shall be tolled by any period of time served
25 in total confinement as a result of a violation found by the court.

26 (d) The department shall determine the rules for calculating the
27 value of a day fine based on the offender's income and reasonable
28 obligations which the offender has for the support of the offender and
29 any dependents. These rules shall be developed in consultation with
30 the administrator for the courts, the office of financial management,
31 and the commission.

32 (7) If a sentence range has not been established for the
33 defendant's crime, the court shall impose a determinate sentence which
34 may include not more than one year of confinement, community service
35 work, a term of community supervision not to exceed one year, and/or
36 other legal financial obligations. The court may impose a sentence
37 which provides more than one year of confinement if the court finds,
38 considering the purpose of this chapter, that there are substantial and
39 compelling reasons justifying an exceptional sentence.

1 (8)(a)(i) When an offender is convicted of a sex offense other than
2 a violation of RCW 9A.44.050 or a sex offense that is also a serious
3 violent offense and has no prior convictions for a sex offense or any
4 other felony sex offenses in this or any other state, the sentencing
5 court, on its own motion or the motion of the state or the defendant,
6 may order an examination to determine whether the defendant is amenable
7 to treatment.

8 The report of the examination shall include at a minimum the
9 following: The defendant's version of the facts and the official
10 version of the facts, the defendant's offense history, an assessment of
11 problems in addition to alleged deviant behaviors, the offender's
12 social and employment situation, and other evaluation measures used.
13 The report shall set forth the sources of the evaluator's information.

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

18 (A) Frequency and type of contact between offender and therapist;

19 (B) Specific issues to be addressed in the treatment and
20 description of planned treatment modalities;

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

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

32 (ii) After receipt of the reports, the court shall consider whether
33 the offender and the community will benefit from use of this special
34 sexual offender sentencing alternative and consider the victim's
35 opinion whether the offender should receive a treatment disposition
36 under this subsection. If the court determines that this special sex
37 offender sentencing alternative is appropriate, the court shall then
38 impose a sentence within the sentence range. If this sentence is less

1 than eight years of confinement, the court may suspend the execution of
2 the sentence and impose the following conditions of suspension:

3 (A) The court shall place the defendant on community supervision
4 for the length of the suspended sentence or three years, whichever is
5 greater; and

6 (B) The court shall order treatment for any period up to three
7 years in duration. The court in its discretion shall order outpatient
8 sex offender treatment or inpatient sex offender treatment, if
9 available. A community mental health center may not be used for such
10 treatment unless it has an appropriate program designed for sex
11 offender treatment. The offender shall not change sex offender
12 treatment providers or treatment conditions without first notifying the
13 prosecutor, the community corrections officer, and the court, and shall
14 not change providers without court approval after a hearing if the
15 prosecutor or community corrections officer object to the change. In
16 addition, as conditions of the suspended sentence, the court may impose
17 other sentence conditions including up to six months of confinement,
18 not to exceed the sentence range of confinement for that offense,
19 crime-related prohibitions, and requirements that the offender perform
20 any one or more of the following:

21 (I) Devote time to a specific employment or occupation;

22 (II) Remain within prescribed geographical boundaries and notify
23 the court or the community corrections officer prior to any change in
24 the offender's address or employment;

25 (III) Report as directed to the court and a community corrections
26 officer;

27 (IV) Pay all court-ordered legal financial obligations as provided
28 in RCW 9.94A.030, perform community service work, or any combination
29 thereof; or

30 (V) Make recoupment to the victim for the cost of any counseling
31 required as a result of the offender's crime.

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

1 (iv) At the time of sentencing, the court shall set a treatment
2 termination hearing for three months prior to the anticipated date for
3 completion of treatment. Prior to the treatment termination hearing,
4 the treatment professional and community corrections officer shall
5 submit written reports to the court and parties regarding the
6 defendant's compliance with treatment and monitoring requirements, and
7 recommendations regarding termination from treatment, including
8 proposed community supervision conditions. Either party may request
9 and the court may order another evaluation regarding the advisability
10 of termination from treatment. The defendant shall pay the cost of any
11 additional evaluation ordered unless the court finds the defendant to
12 be indigent in which case the state shall pay the cost. At the
13 treatment termination hearing the court may: (A) Modify conditions of
14 community supervision, and either (B) terminate treatment, or (C)
15 extend treatment for up to the remaining period of community
16 supervision.

17 (v) The court may revoke the suspended sentence at any time during
18 the period of community supervision and order execution of the sentence
19 if: (A) The defendant violates the conditions of the suspended
20 sentence, or (B) the court finds that the defendant is failing to make
21 satisfactory progress in treatment. All confinement time served during
22 the period of community supervision shall be credited to the offender
23 if the suspended sentence is revoked.

24 (vi) Except as provided in (a)(vii) of this subsection, after July
25 1, 1991, examinations and treatment ordered pursuant to this subsection
26 shall only be conducted by sex offender treatment providers certified
27 by the department of health pursuant to chapter 18.155 RCW.

28 (vii) A sex offender therapist who examines or treats a sex
29 offender pursuant to this subsection (8) does not have to be certified
30 by the department of health pursuant to chapter 18.155 RCW if the court
31 finds that: (A) The offender has already moved to another state or
32 plans to move to another state for reasons other than circumventing the
33 certification requirements; (B) no certified providers are available
34 for treatment within a reasonable geographical distance of the
35 offender's home; and (C) the evaluation and treatment plan comply with
36 this subsection (8) and the rules adopted by the department of health.

37 For purposes of this subsection, "victim" means any person who has
38 sustained emotional, psychological, physical, or financial injury to
39 person or property as a result of the crime charged. "Victim" also

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

3 (b) When an offender commits any felony sex offense on or after
4 July 1, 1987, and is sentenced to a term of confinement of more than
5 one year but less than six years, the sentencing court may, on its own
6 motion or on the motion of the offender or the state, request the
7 department of corrections to evaluate whether the offender is amenable
8 to treatment and the department may place the offender in a treatment
9 program within a correctional facility operated by the department.

10 Except for an offender who has been convicted of a violation of RCW
11 9A.44.040 or 9A.44.050, if the offender completes the treatment program
12 before the expiration of his or her term of confinement, the department
13 of corrections may request the court to convert the balance of
14 confinement to community supervision and to place conditions on the
15 offender including crime-related prohibitions and requirements that the
16 offender perform any one or more of the following:

- 17 (i) Devote time to a specific employment or occupation;
- 18 (ii) Remain within prescribed geographical boundaries and notify
19 the court or the community corrections officer prior to any change in
20 the offender's address or employment;
- 21 (iii) Report as directed to the court and a community corrections
22 officer;
- 23 (iv) Undergo available outpatient treatment.

24 If the offender violates any of the terms of his or her community
25 supervision, the court may order the offender to serve out the balance
26 of his or her community supervision term in confinement in the custody
27 of the department of corrections.

28 Nothing in this subsection (8)(b) shall confer eligibility for such
29 programs for offenders convicted and sentenced for a sex offense
30 committed prior to July 1, 1987. This subsection (8)(b) does not apply
31 to any crime committed after July 1, 1990.

32 (c) Offenders convicted and sentenced for a sex offense committed
33 prior to July 1, 1987, may, subject to available funds, request an
34 evaluation by the department of corrections to determine whether they
35 are amenable to treatment. If the offender is determined to be
36 amenable to treatment, the offender may request placement in a
37 treatment program within a correctional facility operated by the
38 department. Placement in such treatment program is subject to
39 available funds.

1 (9)(a) When a court sentences a person to a term of total
2 confinement to the custody of the department of corrections for an
3 offense categorized as a sex offense or a serious violent offense
4 committed after July 1, 1988, but before July 1, 1990, assault in the
5 second degree, assault of a child in the second degree, any crime
6 against a person where it is determined in accordance with RCW
7 9.94A.125 that the defendant or an accomplice was armed with a deadly
8 weapon at the time of commission, or any felony offense under chapter
9 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
10 committed on or after July 1, 1988, the court shall in addition to the
11 other terms of the sentence, sentence the offender to a one-year term
12 of community placement beginning either upon completion of the term of
13 confinement or at such time as the offender is transferred to community
14 custody in lieu of earned early release in accordance with RCW
15 9.94A.150 (1) and (2). When the court sentences an offender under this
16 subsection to the statutory maximum period of confinement then the
17 community placement portion of the sentence shall consist entirely of
18 such community custody to which the offender may become eligible, in
19 accordance with RCW 9.94A.150 (1) and (2). Any period of community
20 custody actually served shall be credited against the community
21 placement portion of the sentence.

22 (b) When a court sentences a person to a term of total confinement
23 to the custody of the department of corrections for an offense
24 categorized as a sex offense or serious violent offense committed on or
25 after July 1, 1990, the court shall in addition to other terms of the
26 sentence, sentence the offender to community placement for two years or
27 up to the period of earned early release awarded pursuant to RCW
28 9.94A.150 (1) and (2), whichever is longer. The community placement
29 shall begin either upon completion of the term of confinement or at
30 such time as the offender is transferred to community custody in lieu
31 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
32 When the court sentences an offender under this subsection to the
33 statutory maximum period of confinement then the community placement
34 portion of the sentence shall consist entirely of the community custody
35 to which the offender may become eligible, in accordance with RCW
36 9.94A.150 (1) and (2). Any period of community custody actually served
37 shall be credited against the community placement portion of the
38 sentence. Unless a condition is waived by the court, the terms of

1 community placement for offenders sentenced pursuant to this section
2 shall include the following conditions:

3 (i) The offender shall report to and be available for contact with
4 the assigned community corrections officer as directed;

5 (ii) The offender shall work at department of corrections-approved
6 education, employment, and/or community service;

7 (iii) The offender shall not consume controlled substances except
8 pursuant to lawfully issued prescriptions;

9 (iv) An offender in community custody shall not unlawfully possess
10 controlled substances;

11 (v) The offender shall pay supervision fees as determined by the
12 department of corrections; and

13 (vi) The residence location and living arrangements are subject to
14 the prior approval of the department of corrections during the period
15 of community placement.

16 (c) The court may also order any of the following special
17 conditions:

18 (i) The offender shall remain within, or outside of, a specified
19 geographical boundary;

20 (ii) The offender shall not have direct or indirect contact with
21 the victim of the crime or a specified class of individuals;

22 (iii) The offender shall participate in crime-related treatment or
23 counseling services;

24 (iv) The offender shall not consume alcohol; or

25 (v) The offender shall comply with any crime-related prohibitions.

26 (d) Prior to transfer to, or during, community placement, any
27 conditions of community placement may be removed or modified so as not
28 to be more restrictive by the sentencing court, upon recommendation of
29 the department of corrections.

30 (10) If the court imposes a sentence requiring confinement of
31 thirty days or less, the court may, in its discretion, specify that the
32 sentence be served on consecutive or intermittent days. A sentence
33 requiring more than thirty days of confinement shall be served on
34 consecutive days. Local jail administrators may schedule court-ordered
35 intermittent sentences as space permits.

36 (11) If a sentence imposed includes payment of a legal financial
37 obligation, the sentence shall specify the total amount of the legal
38 financial obligation owed, and shall require the offender to pay a
39 specified monthly sum toward that legal financial obligation.

1 Restitution to victims shall be paid prior to any other payments of
2 monetary obligations. Any legal financial obligation that is imposed
3 by the court may be collected by the department, which shall deliver
4 the amount paid to the county clerk for credit. The offender's
5 compliance with payment of legal financial obligations shall be
6 supervised by the department. All monetary payments ordered shall be
7 paid no later than ten years after the last date of release from
8 confinement pursuant to a felony conviction or the date the sentence
9 was entered. Independent of the department, the party or entity to
10 whom the legal financial obligation is owed shall have the authority to
11 utilize any other remedies available to the party or entity to collect
12 the legal financial obligation. Nothing in this section makes the
13 department, the state, or any of its employees, agents, or other
14 persons acting on their behalf liable under any circumstances for the
15 payment of these legal financial obligations. If an order includes
16 restitution as one of the monetary assessments, the county clerk shall
17 make disbursements to victims named in the order.

18 (12) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
19 court may not impose a sentence providing for a term of confinement or
20 community supervision or community placement which exceeds the
21 statutory maximum for the crime as provided in chapter 9A.20 RCW.

22 (13) All offenders sentenced to terms involving community
23 supervision, community service, community placement, or legal financial
24 obligation shall be under the supervision of the secretary of the
25 department of corrections or such person as the secretary may designate
26 and shall follow explicitly the instructions of the secretary including
27 reporting as directed to a community corrections officer, remaining
28 within prescribed geographical boundaries, notifying the community
29 corrections officer of any change in the offender's address or
30 employment, and paying the supervision fee assessment. The department
31 may require offenders to pay for special services rendered on or after
32 July 25, 1993, including electronic monitoring, day reporting, and
33 telephone reporting, dependent upon the offender's ability to pay. The
34 department may pay for these services for offenders who are not able to
35 pay.

36 (14) All offenders sentenced to terms involving community
37 supervision, community service, or community placement under the
38 supervision of the department of corrections shall not own, use, or
39 possess firearms or ammunition. Offenders who own, use, or are found

1 to be in actual or constructive possession of firearms or ammunition
2 shall be subject to the appropriate violation process and sanctions.
3 "Constructive possession" as used in this subsection means the power
4 and intent to control the firearm or ammunition. "Firearm" as used in
5 this subsection means a weapon or device from which a projectile may be
6 fired by an explosive such as gunpowder.

7 (15) The sentencing court shall give the offender credit for all
8 confinement time served before the sentencing if that confinement was
9 solely in regard to the offense for which the offender is being
10 sentenced.

11 (16) A departure from the standards in RCW 9.94A.400 (1) and (2)
12 governing whether sentences are to be served consecutively or
13 concurrently is an exceptional sentence subject to the limitations in
14 subsections (2) and (3) of this section, and may be appealed by the
15 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

16 (17) The court shall order restitution whenever the offender is
17 convicted of a felony that results in injury to any person or damage to
18 or loss of property, whether the offender is sentenced to confinement
19 or placed under community supervision, unless extraordinary
20 circumstances exist that make restitution inappropriate in the court's
21 judgment. The court shall set forth the extraordinary circumstances in
22 the record if it does not order restitution.

23 (18) As a part of any sentence, or upon petition of the department
24 of corrections pursuant to RCW 72.09.340, the court may impose and
25 enforce an order (~~(that relates directly to the circumstances of the~~
26 ~~crime for which the offender has been convicted,~~) prohibiting the
27 offender from having any contact, or prescribing the terms and
28 conditions of limited contact, with other specified individuals or a
29 specific class of individuals for a period not to exceed the maximum
30 allowable sentence for the crime, regardless of the expiration of the
31 offender's term of community supervision or community placement.

32 (19) In any sentence of partial confinement, the court may require
33 the defendant to serve the partial confinement in work release, in a
34 program of home detention, on work crew, or in a combined program of
35 work crew and home detention.

36 (20) All court-ordered legal financial obligations collected by the
37 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any
2 other payments of monetary obligations.

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