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HOUSE BILL 2708

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By Representatives Long, Johanson, Morris, Forner, Van Luven, Dyer, Sheahan, Ballasiotes, Schoesler and Foreman

Read first time 01/21/94. Referred to Committee on Corrections.

1 AN ACT Relating to community supervision of sex offenders;  
2 reenacting and amending RCW 9.94A.120; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.  
5 593) and 1993 c 31 s 3 are each reenacted and amended to read as  
6 follows:

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

9 (1) Except as authorized in subsections (2), (4), (5), and (7) of  
10 this section, the court shall impose a sentence within the sentence  
11 range for the offense.

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

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

1 (4) A persistent offender shall be sentenced to a term of total  
2 confinement for life without the possibility of parole or, when  
3 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
4 first degree, sentenced to death, notwithstanding the maximum sentence  
5 under any other law. An offender convicted of the crime of murder in  
6 the first degree shall be sentenced to a term of total confinement not  
7 less than twenty years. An offender convicted of the crime of assault  
8 in the first degree or assault of a child in the first degree where the  
9 offender used force or means likely to result in death or intended to  
10 kill the victim shall be sentenced to a term of total confinement not  
11 less than five years. An offender convicted of the crime of rape in  
12 the first degree shall be sentenced to a term of total confinement not  
13 less than five years. The foregoing minimum terms of total confinement  
14 are mandatory and shall not be varied or modified as provided in  
15 subsection (2) of this section. In addition, all offenders subject to  
16 the provisions of this subsection shall not be eligible for community  
17 custody, earned early release time, furlough, home detention, partial  
18 confinement, work crew, work release, or any other form of early  
19 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
20 or any other form of authorized leave of absence from the correctional  
21 facility while not in the direct custody of a corrections officer or  
22 officers during such minimum terms of total confinement except in the  
23 case of an offender in need of emergency medical treatment or for the  
24 purpose of commitment to an inpatient treatment facility in the case of  
25 an offender convicted of the crime of rape in the first degree.

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

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

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

1 (c) Pursue a prescribed, secular course of study or vocational  
2 training;

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

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

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

10 (6) If a sentence range has not been established for the  
11 defendant's crime, the court shall impose a determinate sentence which  
12 may include not more than one year of confinement, community service  
13 work, a term of community supervision not to exceed one year, and/or  
14 other legal financial obligations. The court may impose a sentence  
15 which provides more than one year of confinement if the court finds,  
16 considering the purpose of this chapter, that there are substantial and  
17 compelling reasons justifying an exceptional sentence.

18 (7)(a)(i) When an offender is convicted of a sex offense other than  
19 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
20 violent offense and has no prior convictions for a sex offense or any  
21 other felony sex offenses in this or any other state, the sentencing  
22 court, on its own motion or the motion of the state or the defendant,  
23 may order an examination to determine whether the defendant is amenable  
24 to treatment.

25 The report of the examination shall include at a minimum the  
26 following: The defendant's version of the facts and the official  
27 version of the facts, the defendant's offense history, an assessment of  
28 problems in addition to alleged deviant behaviors, the offender's  
29 social and employment situation, and other evaluation measures used.  
30 The report shall set forth the sources of the evaluator's information.

31 The examiner shall assess and report regarding the defendant's  
32 amenability to treatment and relative risk to the community. A  
33 proposed treatment plan shall be provided and shall include, at a  
34 minimum:

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

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

1 (C) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

6 The court on its own motion may order, or on a motion by the state  
7 shall order, a second examination regarding the offender's amenability  
8 to treatment. The evaluator shall be selected by the party making the  
9 motion. The defendant shall pay the cost of any second examination  
10 ordered unless the court finds the defendant to be indigent in which  
11 case the state shall pay the cost.

12 (ii) After receipt of the reports, the court shall consider whether  
13 the offender and the community will benefit from use of this special  
14 sexual offender sentencing alternative and consider the victim's  
15 opinion whether the offender should receive a treatment disposition  
16 under this subsection. If the court determines that this special sex  
17 offender sentencing alternative is appropriate, the court shall then  
18 impose a sentence within the sentence range. If this sentence is less  
19 than eight years of confinement, the court may suspend the execution of  
20 the sentence and impose the following conditions of suspension:

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

24 (B) The court shall order treatment for any period up to three  
25 years in duration. The court in its discretion shall order outpatient  
26 sex offender treatment or inpatient sex offender treatment, if  
27 available. A community mental health center may not be used for such  
28 treatment unless it has an appropriate program designed for sex  
29 offender treatment. The offender shall not change sex offender  
30 treatment providers or treatment conditions without first notifying the  
31 prosecutor, the community corrections officer, and the court, and shall  
32 not change providers without court approval after a hearing if the  
33 prosecutor or community corrections officer object to the change. In  
34 addition, as conditions of the suspended sentence, the court may impose  
35 other sentence conditions including up to six months of confinement,  
36 not to exceed the sentence range of confinement for that offense,  
37 crime-related prohibitions, and requirements that the offender perform  
38 any one or more of the following:

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

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

4 (III) Report as directed to the court and a community corrections  
5 officer;

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

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

11 (iii) The sex offender therapist shall submit quarterly reports on  
12 the defendant's progress in treatment to the court and the parties.  
13 The report shall reference the treatment plan and include at a minimum  
14 the following: Dates of attendance, defendant's compliance with  
15 requirements, treatment activities, the defendant's relative progress  
16 in treatment, and any other material as specified by the court at  
17 sentencing.

18 (iv) At the time of sentencing, the court shall set a treatment  
19 termination hearing for three months prior to the anticipated date for  
20 completion of treatment. Prior to the treatment termination hearing,  
21 the treatment professional and community corrections officer shall  
22 submit written reports to the court and parties regarding the  
23 defendant's compliance with treatment and monitoring requirements, and  
24 recommendations regarding termination from treatment, including  
25 proposed community supervision conditions. Either party may request  
26 and the court may order another evaluation regarding the advisability  
27 of termination from treatment. The defendant shall pay the cost of any  
28 additional evaluation ordered unless the court finds the defendant to  
29 be indigent in which case the state shall pay the cost. At the  
30 treatment termination hearing the court may: (A) Modify conditions of  
31 community supervision, and either (B) terminate treatment, or (C)  
32 extend treatment for up to the remaining period of community  
33 supervision.

34 (v) The court may revoke the suspended sentence at any time during  
35 the period of community supervision and order execution of the sentence  
36 if: (A) The defendant violates the conditions of the suspended  
37 sentence, or (B) the court finds that the defendant is failing to make  
38 satisfactory progress in treatment. All confinement time served during

1 the period of community supervision shall be credited to the offender  
2 if the suspended sentence is revoked.

3 (vi) Except as provided in (a)(vii) of this subsection, after July  
4 1, 1991, examinations and treatment ordered pursuant to this subsection  
5 shall only be conducted by sex offender treatment providers certified  
6 by the department of health pursuant to chapter 18.155 RCW.

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

16 For purposes of this subsection, "victim" means any person who has  
17 sustained emotional, psychological, physical, or financial injury to  
18 person or property as a result of the crime charged. "Victim" also  
19 means a parent or guardian of a victim who is a minor child unless the  
20 parent or guardian is the perpetrator of the offense.

21 (b) When an offender is convicted of any felony sex offense  
22 committed before July 1, 1987, and is sentenced to a term of  
23 confinement of more than one year but less than six years, the  
24 sentencing court may, on its own motion or on the motion of the  
25 offender or the state, order the offender committed for up to thirty  
26 days to the custody of the secretary of social and health services for  
27 evaluation and report to the court on the offender's amenability to  
28 treatment at these facilities. If the secretary of social and health  
29 services cannot begin the evaluation within thirty days of the court's  
30 order of commitment, the offender shall be transferred to the state for  
31 confinement pending an opportunity to be evaluated at the appropriate  
32 facility. The court shall review the reports and may order that the  
33 term of confinement imposed be served in the sexual offender treatment  
34 program at the location determined by the secretary of social and  
35 health services or the secretary's designee, only if the report  
36 indicates that the offender is amenable to the treatment program  
37 provided at these facilities. The offender shall be transferred to the  
38 state pending placement in the treatment program. Any offender who has

1 escaped from the treatment program shall be referred back to the  
2 sentencing court.

3 If the offender does not comply with the conditions of the  
4 treatment program, the secretary of social and health services may  
5 refer the matter to the sentencing court. The sentencing court shall  
6 commit the offender to the department of corrections to serve the  
7 balance of the term of confinement.

8 If the offender successfully completes the treatment program before  
9 the expiration of the term of confinement, the court may convert the  
10 balance of confinement to community supervision and may place  
11 conditions on the offender including crime-related prohibitions and  
12 requirements that the offender perform any one or more of the  
13 following:

14 (i) Devote time to a specific employment or occupation;

15 (ii) Remain within prescribed geographical boundaries and notify  
16 the court or the community corrections officer prior to any change in  
17 the offender's address or employment;

18 (iii) Report as directed to the court and a community corrections  
19 officer;

20 (iv) Undergo available outpatient treatment.

21 If the offender violates any of the terms of community supervision,  
22 the court may order the offender to serve out the balance of the  
23 community supervision term in confinement in the custody of the  
24 department of corrections.

25 After June 30, 1993, this subsection (b) shall cease to have  
26 effect.

27 (c) When an offender commits any felony sex offense on or after  
28 July 1, 1987, and is sentenced to a term of confinement of more than  
29 one year but less than six years, the sentencing court may, on its own  
30 motion or on the motion of the offender or the state, request the  
31 department of corrections to evaluate whether the offender is amenable  
32 to treatment and the department may place the offender in a treatment  
33 program within a correctional facility operated by the department.

34 Except for an offender who has been convicted of a violation of RCW  
35 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
36 before the expiration of his or her term of confinement, the department  
37 of corrections may request the court to convert the balance of  
38 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the  
2 offender perform any one or more of the following:

3 (i) Devote time to a specific employment or occupation;

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

7 (iii) Report as directed to the court and a community corrections  
8 officer;

9 (iv) Undergo available outpatient treatment.

10 If the offender violates any of the terms of his or her community  
11 supervision, the court may order the offender to serve out the balance  
12 of his or her community supervision term in confinement in the custody  
13 of the department of corrections.

14 Nothing in (c) of this subsection shall confer eligibility for such  
15 programs for offenders convicted and sentenced for a sex offense  
16 committed prior to July 1, 1987. This subsection (c) does not apply to  
17 any crime committed after July 1, 1990.

18 (d) Offenders convicted and sentenced for a sex offense committed  
19 prior to July 1, 1987, may, subject to available funds, request an  
20 evaluation by the department of corrections to determine whether they  
21 are amenable to treatment. If the offender is determined to be  
22 amenable to treatment, the offender may request placement in a  
23 treatment program within a correctional facility operated by the  
24 department. Placement in such treatment program is subject to  
25 available funds.

26 (8)(a) When a court sentences a person to a term of total  
27 confinement to the custody of the department of corrections for an  
28 offense categorized as a sex offense or a serious violent offense  
29 committed after July 1, 1988, but before July 1, 1990, assault in the  
30 second degree, assault of a child in the second degree, any crime  
31 against a person where it is determined in accordance with RCW  
32 9.94A.125 that the defendant or an accomplice was armed with a deadly  
33 weapon at the time of commission, or any felony offense under chapter  
34 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
35 in addition to the other terms of the sentence, sentence the offender  
36 to a one-year term of community placement beginning either upon  
37 completion of the term of confinement or at such time as the offender  
38 is transferred to community custody in lieu of earned early release in  
39 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an



1 offender under this subsection to the statutory maximum period of  
2 confinement then the community placement portion of the sentence shall  
3 consist entirely of such community custody to which the offender may  
4 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
5 period of community custody actually served shall be credited against  
6 the community placement portion of the sentence.

7 (b) When a court sentences a person to a term of total confinement  
8 to the custody of the department of corrections for an offense  
9 categorized as a sex offense or serious violent offense committed on or  
10 after July 1, 1990, but before July 1, 1994, the court shall in  
11 addition to other terms of the sentence, sentence the offender to  
12 community placement for two years or up to the period of earned early  
13 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
14 longer. The community placement shall begin either upon completion of  
15 the term of confinement or at such time as the offender is transferred  
16 to community custody in lieu of earned early release in accordance with  
17 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
18 this subsection to the statutory maximum period of confinement then the  
19 community placement portion of the sentence shall consist entirely of  
20 the community custody to which the offender may become eligible, in  
21 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
22 custody actually served shall be credited against the community  
23 placement portion of the sentence. Unless a condition is waived by the  
24 court, the terms of community placement for offenders sentenced  
25 pursuant to this section shall include the following conditions:

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

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

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

32 (iv) An offender in community custody shall not unlawfully possess  
33 controlled substances;

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

36 (vi) The residence location and living arrangements are subject to  
37 the prior approval of the department of corrections during the period  
38 of community placement.

1 (c) The court may also order any of the following special  
2 conditions:

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

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

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

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

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

11 (d) When a court sentences a person to a term of total confinement  
12 to the custody of the department of corrections for an offense  
13 categorized as a sex offense or serious violent offense committed on or  
14 after July 1, 1994, the court shall follow the sentencing provisions of  
15 (b) of this subsection, subject to the modifications noted in this  
16 subsection (8)(d). The minimum duration of community placement shall  
17 be two years. The maximum duration of community placement shall be  
18 five years or the period of earned early release, whichever is greater.  
19 For any offender who received treatment while incarcerated, the  
20 sentencing court may also require as a condition of community placement  
21 that the offender continue with a particular treatment program for some  
22 or all of the duration of community placement. The department of  
23 corrections may recommend to the sentencing court whether the option of  
24 continuing treatment is appropriate.

25 (e) Prior to transfer to, or during, community placement, any  
26 conditions of community placement may be removed or modified so as not  
27 to be more restrictive by the sentencing court, upon recommendation of  
28 the department of corrections. Additionally, with respect to sex  
29 offenses committed on or after July 1, 1994, the sentencing court at  
30 any time prior to or during community placement may impose additional  
31 or more restrictive conditions of community placement and may lengthen  
32 or shorten the duration of community placement. The department of  
33 corrections may recommend to the sentencing court whether any such  
34 changes should be imposed.

35 (9) If the court imposes a sentence requiring confinement of thirty  
36 days or less, the court may, in its discretion, specify that the  
37 sentence be served on consecutive or intermittent days. A sentence  
38 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

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

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

28 (12) All offenders sentenced to terms involving community  
29 supervision, community service, community placement, or legal financial  
30 obligation shall be under the supervision of the secretary of the  
31 department of corrections or such person as the secretary may designate  
32 and shall follow explicitly the instructions of the secretary including  
33 reporting as directed to a community corrections officer, remaining  
34 within prescribed geographical boundaries, notifying the community  
35 corrections officer of any change in the offender's address or  
36 employment, and paying the supervision fee assessment. The department  
37 may require offenders to pay for special services rendered on or after  
38 July 25, 1993, including electronic monitoring, day reporting, and  
39 telephone reporting, dependent upon the offender's ability to pay. The

1 department may pay for these services for offenders who are not able to  
2 pay.

3 (13) All offenders sentenced to terms involving community  
4 supervision, community service, or community placement under the  
5 supervision of the department of corrections shall not own, use, or  
6 possess firearms or ammunition. Offenders who own, use, or are found  
7 to be in actual or constructive possession of firearms or ammunition  
8 shall be subject to the appropriate violation process and sanctions.  
9 "Constructive possession" as used in this subsection means the power  
10 and intent to control the firearm or ammunition. "Firearm" as used in  
11 this subsection means a weapon or device from which a projectile may be  
12 fired by an explosive such as gunpowder.

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

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

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

29 (17) As a part of any sentence, the court may impose and enforce an  
30 order that relates directly to the circumstances of the crime for which  
31 the offender has been convicted, prohibiting the offender from having  
32 any contact with other specified individuals or a specific class of  
33 individuals for a period not to exceed the maximum allowable sentence  
34 for the crime, regardless of the expiration of the offender's term of  
35 community supervision or community placement.

36 (18) In any sentence of partial confinement, the court may require  
37 the defendant to serve the partial confinement in work release, in a  
38 program of home detention, on work crew, or in a combined program of  
39 work crew and home detention.

1           (19) All court-ordered legal financial obligations collected by the  
2 department and remitted to the county clerk shall be credited and paid  
3 where restitution is ordered. Restitution shall be paid prior to any  
4 other payments of monetary obligations.

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