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**SUBSTITUTE HOUSE BILL 2178**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons, and Doglio)

AN ACT Relating to establishing a pathway off lifetime community custody for individuals with sex offense convictions; amending RCW 9.94A.507 and 9.94A.670; and adding a new section to chapter 9.94A RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1)(a) Individuals who are recommended as risk level I upon their release from confinement by the end-of-sentence review committee under RCW 72.09.345 shall be discharged from community custody five years after their return to the community if they meet the eligibility requirements and have not committed a temporary disqualifying event. The board shall review the relevant records to determine if the individual meets the eligibility criteria and discharge them from community custody if the individual is eligible in an administrative process.

(b) If the individual is determined to not meet criteria for discharge from community custody, or the department identifies specific safety concerns, the board, in its review, may hold a hearing to determine if the individual may be discharged from community custody or order community custody to continue. Any input from community corrections officers, parole or probation officers, or law enforcement must be considered by the board.

(c) If the board finds the individual does not meet criteria to be discharged from community custody, the board may order community custody continue for up to 60 months before being reviewed again for discharge from community custody.

(2)(a) Individuals who are recommended as risk level II by the end-of-sentence review committee upon their release from confinement may be eligible for discharge from community custody 10 years after their return to the community if they meet the eligibility requirements and have not committed a temporary disqualifying event.

(b)(i) The board must determine if the individual qualifies for discharge from community custody and may extend the period of supervision if the board determines the individual has recently engaged in behaviors that are related to the crime of conviction, risk of reoffense, or a risk to community safety. Any input from community corrections officers, parole or probation officers, or law enforcement must be considered by the board. A review hearing must be held by the board at least 120 days prior to the end of the supervision period.

(ii) Before the review hearing, the board shall conduct, and the offender may participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness. The board may consider a person's failure to participate in an examination for board decision making.

(iii) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If a temporary disqualifying event occurs within the last five years of the first 10 years from an individual's release from confinement, the individual will not be eligible for discharge from community custody for an additional three years after the initial 10 years in the community have concluded. A review hearing by the board must be held at least 120 days prior to the end of the supervision date.

(d) If the individual engages in behaviors that are related to the crime of conviction, risk of reoffense, or a risk to community safety, after the individual has been on community custody for the maximum time allowed in (c) of this subsection, the board may order community custody continue for up to 60 months before being reviewed again for discharge from community custody.

(3)(a) Individuals who are recommended as risk level III by the end-of-sentence review committee upon their release from confinement may be eligible for discharge from community custody 15 years after their return to the community if they meet the eligibility requirements and have not committed a temporary disqualifying event.

(b)(i) The board must determine if the individual qualifies for discharge from community custody and may extend the period of supervision if the board determines the individual has recently engaged in behaviors that are related to the crime of conviction, risk of reoffense, or a risk to community safety. Any input from community corrections officers, parole or probation officers, or law enforcement must be considered by the board. A review hearing must be held at least 120 days prior to the end of the supervision period.

(ii) Before the review hearing, the board shall conduct, and the offender may participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness. The board may consider a person's failure to participate in an examination for board decision making.

(iii) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If a temporary disqualifying event occurs within the last five years of the first 15 years from an individual's release from confinement, the individual will not be eligible for discharge from community custody for an additional five years after the initial 15 years in the community have concluded. A review hearing by the board must be held at least 120 days prior to the end of the supervision period.

(d) If the individual engages in behaviors that are related to the crime of conviction, risk of reoffense, or a risk to community safety, after the individual has been on supervision for the maximum time allowed in (c) of this subsection, the board may order community custody continue for up to 60 months before being reviewed again for discharge from community custody.

(4) For purposes of this section:

(a) "Temporary disqualifying event" means:

(i) The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the board at an on-site hearing. The board shall adopt rules defining "serious violation";

(ii) The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;

(iii) The individual has not completed all recommended treatment as required in the judgment and sentence and board conditions. The board may waive this condition if there is a finding the failure to complete all recommended treatment resulted from the individual's indigence;

(iv) The individual has been found to be noncompliant with conditions of supervision on a repeated basis as documented by the department. These violations must be addressed on a formal basis by the board prior to release from community custody; or

(v) The individual has been assessed to be at significant risk for sexual recidivism on an empirically validated department-approved dynamic risk assessment completed within 120 days of eligibility for discharge.

(b) "Discharge from community custody" means the individual is no longer under the supervision of the department or the board, unless a required return to community custody occurs before the statutory maximum of the crime of conviction. Discharge from community custody shall not impede the restoration of civil rights, count as probation, or terminate the jurisdiction of the board. Discharge from community custody shall not impact an offender's duty to register under RCW 9A.44.130. Removal from community custody shall not impact community notification under RCW 4.24.550.

(c) "Return to community custody" means that the board resumes community custody of an individual due to a conviction for a crime reasonably related to the crime which placed the individual under the jurisdiction of the board, risk of reoffense, or community safety.

(d) Eligibility requirements to be discharged from community custody are:

(i) Meet the criteria in subsection (1), (2), or (3) of this section associated with the individual's recommended risk level by the end of sentence review committee; and

(ii) Not engage in risk relevant behaviors related to the crime of conviction, risk of reoffense, or risk to community safety within a reasonable time frame to the individual's eligibility to be discharged from community custody.

(5) By December 1, 2024, and every December 1st of each year thereafter, and in compliance with RCW 43.01.036, the department and board shall submit a report to the governor and the appropriate committees of the legislature that details the following:

(a) The number of individuals eligible for discharge from lifetime community custody;

(b) The number of individuals granted discharge from lifetime community custody; and

(c) The number of individuals who, after discharge from lifetime community custody, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.

(6) The department and the board have discretion to implement the review process for discharging eligible individuals from community custody over a period of time not to exceed 12 months following the effective date of this section.

**Sec.**  RCW 9.94A.507 and 2008 c 231 s 33 are each amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030((~~(31)(b)~~)) (37), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was ((~~seventeen~~)) 17 years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or ((~~twenty-five~~)) 25 years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of ((~~fifteen~~)) 15 at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or ((~~twenty-five~~)) 25 years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or ((~~twenty-five~~)) 25 years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence, unless or until the person is discharged from community custody as outlined in section 1 of this act.

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

**Sec.**  RCW 9.94A.670 and 2009 c 28 s 9 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

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

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

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

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

(ii) The offender's offense history;

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

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

(v) Other evaluation measures used.

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

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

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

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

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

(iv) Anticipated length of treatment; and

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

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

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

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

(b) A term of community custody equal to the length of the suspended sentence, ((~~the length of the maximum term imposed pursuant to RCW 9.94A.507,~~)) or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703. A supervision termination hearing shall be scheduled with the sentencing court within the last 60 days of the presumed expiration of community custody to determine if the individual should be released from community custody.

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

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

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

(a) Crime-related prohibitions;

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

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

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

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

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

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

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

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

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

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

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

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

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

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

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

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

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

**--- END ---**