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**HOUSE BILL 2178**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representatives Goodman and Simmons

1 AN ACT Relating to establishing a pathway off lifetime community  
2 custody for individuals with sex offense convictions; amending RCW  
3 9.94A.507 and 9.94A.670; and adding a new section to chapter 9.94A  
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A  
7 RCW to read as follows:

8 (1)(a) Individuals who are recommended as risk level I upon their  
9 release from confinement by the end-of-sentence review committee  
10 under RCW 72.09.345 shall be discharged from community custody five  
11 years after their return to the community if they meet the  
12 eligibility requirements and have not committed a disqualifying  
13 event. The department shall review the relevant records to determine  
14 if the individual meets the eligibility criteria and process them off  
15 community custody if the individual is eligible.

16 (b) If the department determines that an individual recommended  
17 as level I does not meet the criteria for relief from lifetime  
18 community custody, or can identify a specific safety concern, the  
19 department shall send the individual's case file to the board for  
20 review. The department may make a referral to the board for review of  
21 a level I at least 90 days prior to discharge from community custody

1 if the department has reasonable grounds to believe the person poses  
2 a significant risk of sexual recidivism.

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

8 (b) The board must review the file of an individual recommended  
9 as level II, submitted by the department to the board, to determine  
10 if the individual qualifies for relief from community custody and may  
11 extend the period of supervision for good cause shown. A review  
12 hearing must be held by the board at least 120 days prior to the end  
13 of the supervision period.

14 (c) If a disqualifying event occurs within the last five years of  
15 the first 10 years from an individual's release from confinement, the  
16 individual will not be eligible for discharge from supervision for an  
17 additional three years after the initial 10 years in the community  
18 have concluded. A review hearing by the board must be held at least  
19 120 days prior to the discharge from supervision date.

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

25 (b) The board must review the file of an individual recommended  
26 as level III, submitted by the department to the board, to determine  
27 if the individual qualifies for relief from community custody and may  
28 extend the period of supervision for good cause shown. A review  
29 hearing must be held at least 120 days prior to the discharge from  
30 supervision date.

31 (c) If a disqualifying event occurs within the last five years of  
32 the first 15 years from an individual's release from confinement, the  
33 individual will not be eligible for discharge from supervision for an  
34 additional five years after the initial 15 years in the community  
35 have concluded. A review hearing by the board must be held at least  
36 120 days prior to the discharge from supervision date.

37 (4) For the purposes of this section, "disqualifying event"  
38 means:

39 (a) The individual has been found guilty of any serious and risk-  
40 relevant violation of the conditions of community custody, as

1 determined by the board at an on-site hearing. The department shall  
2 adopt rules defining "serious violation";

3 (b) The individual has been convicted of any new felony offense  
4 or any misdemeanor sex offense as defined in RCW 9A.44.128 or  
5 9.94A.030;

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

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

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

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

24 (a) The number of individuals eligible for discharge from  
25 lifetime supervision;

26 (b) The number of individuals granted discharge from lifetime  
27 supervision; and

28 (c) The number of individuals who, after discharge from lifetime  
29 supervision, are investigated for a recent overt act as defined by  
30 RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or  
31 9.94A.030.

32 **Sec. 2.** RCW 9.94A.507 and 2008 c 231 s 33 are each amended to  
33 read as follows:

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

36 (a) Is convicted of:

37 (i) Rape in the first degree, rape in the second degree, rape of  
38 a child in the first degree, child molestation in the first degree,

1 rape of a child in the second degree, or indecent liberties by  
2 forcible compulsion;

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

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

11 (b) Has a prior conviction for an offense listed in RCW  
12 9.94A.030(~~(31)(b)~~) (37), and is convicted of any sex offense other  
13 than failure to register.

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

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

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

23 (c)(i) Except as provided in (c)(ii) of this subsection, the  
24 minimum term shall be either within the standard sentence range for  
25 the offense, or outside the standard sentence range pursuant to RCW  
26 9.94A.535, if the offender is otherwise eligible for such a sentence.

27 (ii) If the offense that caused the offender to be sentenced  
28 under this section was rape of a child in the first degree, rape of a  
29 child in the second degree, or child molestation in the first degree,  
30 and there has been a finding that the offense was predatory under RCW  
31 9.94A.836, the minimum term shall be either the maximum of the  
32 standard sentence range for the offense or twenty-five years,  
33 whichever is greater. If the offense that caused the offender to be  
34 sentenced under this section was rape in the first degree, rape in  
35 the second degree, indecent liberties by forcible compulsion, or  
36 kidnapping in the first degree with sexual motivation, and there has  
37 been a finding that the victim was under the age of fifteen at the  
38 time of the offense under RCW 9.94A.837, the minimum term shall be  
39 either the maximum of the standard sentence range for the offense or  
40 twenty-five years, whichever is greater. If the offense that caused

1 the offender to be sentenced under this section is rape in the first  
2 degree, rape in the second degree with forcible compulsion, indecent  
3 liberties with forcible compulsion, or kidnapping in the first degree  
4 with sexual motivation, and there has been a finding under RCW  
5 9.94A.838 that the victim was, at the time of the offense,  
6 developmentally disabled, mentally disordered, or a frail elder or  
7 vulnerable adult, the minimum sentence shall be either the maximum of  
8 the standard sentence range for the offense or twenty-five years,  
9 whichever is greater.

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

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

17 (5) When a court sentences a person to the custody of the  
18 department under this section, the court shall, in addition to the  
19 other terms of the sentence, sentence the offender to community  
20 custody under the supervision of the department and the authority of  
21 the board for any period of time the person is released from total  
22 confinement before the expiration of the maximum sentence.

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

26 (b) An offender released by the board under RCW 9.95.420 is  
27 subject to the supervision of the department until the expiration of  
28 the maximum term of the sentence, or as authorized by section 1 of  
29 this act. The department shall monitor the offender's compliance with  
30 conditions of community custody imposed by the court, department, or  
31 board, and promptly report any violations to the board. Any violation  
32 of conditions of community custody established or modified by the  
33 board are subject to the provisions of RCW 9.95.425 through 9.95.440.

34 **Sec. 3.** RCW 9.94A.670 and 2009 c 28 s 9 are each amended to read  
35 as follows:

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

38 (a) "Sex offender treatment provider" or "treatment provider"  
39 means a certified sex offender treatment provider or a certified

1 affiliate sex offender treatment provider as defined in RCW  
2 18.155.020.

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

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

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

14 (a) The offender has been convicted of a sex offense other than a  
15 violation of RCW 9A.44.050 or a sex offense that is also a serious  
16 violent offense. If the conviction results from a guilty plea, the  
17 offender must, as part of his or her plea of guilty, voluntarily and  
18 affirmatively admit he or she committed all of the elements of the  
19 crime to which the offender is pleading guilty. This alternative is  
20 not available to offenders who plead guilty to the offense charged  
21 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d  
22 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

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

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

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

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

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

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

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

5 (ii) The offender's offense history;

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

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

9 (v) Other evaluation measures used.

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

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

16 (i) Frequency and type of contact between offender and 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 and others;

22 (iv) Anticipated length of treatment; and

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

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

35 (4) After receipt of the reports, the court shall consider  
36 whether the offender and the community will benefit from use of this  
37 alternative, consider whether the alternative is too lenient in light  
38 of the extent and circumstances of the offense, consider whether the  
39 offender has victims in addition to the victim of the offense,  
40 consider whether the offender is amenable to treatment, consider the

1 risk the offender would present to the community, to the victim, or  
2 to persons of similar age and circumstances as the victim, and  
3 consider the victim's opinion whether the offender should receive a  
4 treatment disposition under this section. The court shall give great  
5 weight to the victim's opinion whether the offender should receive a  
6 treatment disposition under this section. If the sentence imposed is  
7 contrary to the victim's opinion, the court shall enter written  
8 findings stating its reasons for imposing the treatment disposition.  
9 The fact that the offender admits to his or her offense does not, by  
10 itself, constitute amenability to treatment. If the court determines  
11 that this alternative is appropriate, the court shall then impose a  
12 sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence,  
13 within the standard sentence range. If the sentence imposed is less  
14 than eleven years of confinement, the court may suspend the execution  
15 of the sentence as provided in this section.

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

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

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

36 (c) Treatment for any period up to five years in duration. The  
37 court, in its discretion, shall order outpatient sex offender  
38 treatment or inpatient sex offender treatment, if available. A  
39 community mental health center may not be used for such treatment  
40 unless it has an appropriate program designed for sex offender



1 treatment. The offender shall not change sex offender treatment  
2 providers or treatment conditions without first notifying the  
3 prosecutor, the community corrections officer, and the court. If any  
4 party or the court objects to a proposed change, the offender shall  
5 not change providers or conditions without court approval after a  
6 hearing.

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

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

14 (a) Crime-related prohibitions;

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

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

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

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

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

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

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

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

38 (b) The court shall conduct a hearing on the offender's progress  
39 in treatment at least once a year. At least fourteen days prior to  
40 the hearing, notice of the hearing shall be given to the victim. The

1 victim shall be given the opportunity to make statements to the court  
2 regarding the offender's supervision and treatment. At the hearing,  
3 the court may modify conditions of community custody including, but  
4 not limited to, crime-related prohibitions and affirmative conditions  
5 relating to activities and behaviors identified as part of, or  
6 relating to precursor activities and behaviors in, the offender's  
7 offense cycle or revoke the suspended sentence.

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

30 (10)(a) If a violation of conditions other than a second  
31 violation of the prohibitions or affirmative conditions relating to  
32 precursor behaviors or activities imposed under subsection (5)(d) or  
33 (8)(b) of this section occurs during community custody, the  
34 department shall either impose sanctions as provided for in RCW  
35 9.94A.633(1) or refer the violation to the court and recommend  
36 revocation of the suspended sentence as provided for in subsections  
37 (7) and (9) of this section.

38 (b) If a second violation of the prohibitions or affirmative  
39 conditions relating to precursor behaviors or activities imposed  
40 under subsection (5)(d) or (8)(b) of this section occurs during

1 community custody, the department shall refer the violation to the  
2 court and recommend revocation of the suspended sentence as provided  
3 in subsection (11) of this section.

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

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

15 (13) The offender's sex offender treatment provider may not be  
16 the same person who examined the offender under subsection (3) of  
17 this section or any person who employs, is employed by, or shares  
18 profits with the person who examined the offender under subsection  
19 (3) of this section, unless the court has entered written findings  
20 that such treatment is in the best interests of the victim and that  
21 successful treatment of the offender would otherwise be impractical.  
22 Examinations and treatment ordered pursuant to this subsection shall  
23 only be conducted by certified sex offender treatment providers or  
24 certified affiliate sex offender treatment providers under chapter  
25 18.155 RCW unless the court finds that:

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

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

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

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

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