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SENATE BILL 5825

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By Senators Nelson, Madsen, Thorsness, Erwin, Rasmussen, Oke and L. Kreidler; by request of Department of Corrections.

Read first time February 22, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to restricting offenders' possession of firearms;  
2 amending RCW 9.94A.120; and adding a new section to chapter 9.41 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.41 RCW  
5 to read as follows:

6 As a sentence condition and requirement, offenders under the  
7 supervision of the department of corrections pursuant to chapter 9.94A  
8 RCW shall not own, use, or possess firearms or ammunition. In addition  
9 to any penalty imposed pursuant to RCW 9.41.040 when applicable,  
10 offenders found to be in actual or constructive possession of firearms  
11 or ammunition shall be subject to the appropriate violation process and  
12 sanctions as provided for in RCW 9.94A.200. Firearms or ammunition  
13 owned, used, or possessed by offenders may be confiscated by community  
14 corrections officers and turned over to local law enforcement agencies  
15 for disposal as provided in RCW 9.41.098.

1       **Sec. 2.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read  
2 as follows:

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

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

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

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

16       (4) An offender convicted of the crime of murder in the first  
17 degree shall be sentenced to a term of total confinement not less than  
18 twenty years. An offender convicted of the crime of assault in the  
19 first degree where the offender used force or means likely to result in  
20 death or intended to kill the victim shall be sentenced to a term of  
21 total confinement not less than five years. An offender convicted of  
22 the crime of rape in the first degree shall be sentenced to a term of  
23 total confinement not less than five years, and shall not be eligible  
24 for furlough, work release or other authorized leave of absence from  
25 the correctional facility during such minimum five-year term except for  
26 the purpose of commitment to an inpatient treatment facility. The  
27 foregoing minimum terms of total confinement are mandatory and shall  
28 not be varied or modified as provided in subsection (2) of this  
29 section.

1 (5) In sentencing a first-time offender the court may waive the  
2 imposition of a sentence within the sentence range and impose a  
3 sentence which may include up to ninety days of confinement in a  
4 facility operated or utilized under contract by the county and a  
5 requirement that the offender refrain from committing new offenses.  
6 The sentence may also include up to two years of community supervision,  
7 which, in addition to crime-related prohibitions, may include  
8 requirements that the offender perform any one or more of the  
9 following:

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

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

14 (c) Pursue a prescribed, secular course of study or vocational  
15 training;

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

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

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

23 (6) If a sentence range has not been established for the  
24 defendant's crime, the court shall impose a determinate sentence which  
25 may include not more than one year of confinement, community service  
26 work, a term of community supervision not to exceed one year, and/or  
27 other legal financial obligations. The court may impose a sentence  
28 which provides more than one year of confinement if the court finds,  
29 considering the purpose of this chapter, that there are substantial and  
30 compelling reasons justifying an exceptional sentence.

1 (7)(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

1 ordered unless the court finds the defendant to be indigent in which  
2 case the state shall pay the cost.

3 (ii) After receipt of the reports, the court shall consider whether  
4 the offender and the community will benefit from use of this special  
5 sexual offender sentencing alternative and consider the victim's  
6 opinion whether the offender should receive a treatment disposition  
7 under this subsection. If the court determines that this special sex  
8 offender sentencing alternative is appropriate, the court shall then  
9 impose a sentence within the sentence range. If this sentence is less  
10 than eight years of confinement, the court may suspend the execution of  
11 the sentence and impose the following conditions of suspension:

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

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

30 (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

1 community supervision, and either (B) terminate treatment, or (C)  
2 extend treatment for up to the remaining period of community  
3 supervision.

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

11 (vi) After July 1, 1991, examinations and treatment ordered  
12 pursuant to this subsection shall only be conducted by sex offender  
13 treatment providers certified by the department of health pursuant to  
14 chapter 18.155 RCW.

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

20 (b) When an offender is convicted of any felony sex offense  
21 committed before July 1, 1987, and is sentenced to a term of  
22 confinement of more than one year but less than six years, the  
23 sentencing court may, on its own motion or on the motion of the  
24 offender or the state, order the offender committed for up to thirty  
25 days to the custody of the secretary of social and health services for  
26 evaluation and report to the court on the offender's amenability to  
27 treatment at these facilities. If the secretary of social and health  
28 services cannot begin the evaluation within thirty days of the court's  
29 order of commitment, the offender shall be transferred to the state for  
30 confinement pending an opportunity to be evaluated at the appropriate

1 facility. The court shall review the reports and may order that the  
2 term of confinement imposed be served in the sexual offender treatment  
3 program at the location determined by the secretary of social and  
4 health services or the secretary's designee, only if the report  
5 indicates that the offender is amenable to the treatment program  
6 provided at these facilities. The offender shall be transferred to the  
7 state pending placement in the treatment program. Any offender who has  
8 escaped from the treatment program shall be referred back to the  
9 sentencing court.

10 If the offender does not comply with the conditions of the  
11 treatment program, the secretary of social and health services may  
12 refer the matter to the sentencing court. The sentencing court shall  
13 commit the offender to the department of corrections to serve the  
14 balance of the term of confinement.

15 If the offender successfully completes the treatment program before  
16 the expiration of the term of confinement, the court may convert the  
17 balance of confinement to community supervision and may place  
18 conditions on the offender including crime-related prohibitions and  
19 requirements that the offender perform any one or more of the  
20 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) Undergo available outpatient treatment.

28 If the offender violates any of the terms of community supervision,  
29 the court may order the offender to serve out the balance of the

1 community supervision term in confinement in the custody of the  
2 department of corrections.

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

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

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

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

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

23 (iii) Report as directed to the court and a community corrections  
24 officer;

25 (iv) Undergo available outpatient treatment.

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

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

5        (d) Offenders convicted and sentenced for a sex offense committed  
6 prior to July 1, 1987, may, subject to available funds, request an  
7 evaluation by the department of corrections to determine whether they  
8 are amenable to treatment. If the offender is determined to be  
9 amenable to treatment, the offender may request placement in a  
10 treatment program within a correctional facility operated by the  
11 department. Placement in such treatment program is subject to  
12 available funds.

13        (8)(a) When a court sentences a person to a term of total  
14 confinement to the custody of the department of corrections for an  
15 offense categorized as a sex offense or a serious violent offense  
16 committed after July 1, 1988, but before July 1, 1990, assault in the  
17 second degree, any crime against a person where it is determined in  
18 accordance with RCW 9.94A.125 that the defendant or an accomplice was  
19 armed with a deadly weapon at the time of commission, or any felony  
20 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,  
21 1988, the court shall in addition to the other terms of the sentence,  
22 sentence the offender to a one-year term of community placement  
23 beginning either upon completion of the term of confinement or at such  
24 time as the offender is transferred to community custody in lieu of  
25 earned early release in accordance with RCW 9.94A.150 (1) and (2).  
26 When the court sentences an offender under this subsection to the  
27 statutory maximum period of confinement then the community placement  
28 portion of the sentence shall consist entirely of such community  
29 custody to which the offender may become eligible, in accordance with  
30 RCW 9.94A.150 (1) and (2). Any period of community custody actually

1 served shall be credited against the community placement portion of the  
2 sentence.

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

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

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

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

28 (iv) An offender in community custody shall not unlawfully possess  
29 controlled substances; and

1 (v) The offender shall pay supervision fees as determined by the  
2 department of corrections.

3 (c) The court may also order any of the following special  
4 conditions:

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

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

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

11 (iv) The offender shall not consume alcohol;

12 (v) The residence location and living arrangements of a sex  
13 offender shall be subject to the prior approval of the department of  
14 corrections; or

15 (vi) The offender shall comply with any crime-related prohibitions.

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

20 (9) If the court imposes a sentence requiring confinement of thirty  
21 days or less, the court may, in its discretion, specify that the  
22 sentence be served on consecutive or intermittent days. A sentence  
23 requiring more than thirty days of confinement shall be served on  
24 consecutive days. Local jail administrators may schedule court-ordered  
25 intermittent sentences as space permits.

26 (10) If a sentence imposed includes payment of a legal financial  
27 obligation, the sentence shall specify the total amount of the legal  
28 financial obligation owed, and shall require the offender to pay a  
29 specified monthly sum toward that legal financial obligation.  
30 Restitution to victims shall be paid prior to any other payments of

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

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

21 (12) All offenders sentenced to terms involving community  
22 supervision, community service, community placement, or legal financial  
23 obligation shall be under the supervision of the secretary of the  
24 department of corrections or such person as the secretary may designate  
25 and shall follow explicitly the instructions of the secretary including  
26 reporting as directed to a community corrections officer, remaining  
27 within prescribed geographical boundaries, and notifying the community  
28 corrections officer of any change in the offender's address or  
29 employment.

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

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

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

18       (~~(15)~~) (16) The court shall order restitution whenever the  
19 offender is convicted of a felony that results in injury to any person  
20 or damage to or loss of property, whether the offender is sentenced to  
21 confinement or placed under community supervision, unless extraordinary  
22 circumstances exist that make restitution inappropriate in the court's  
23 judgment. The court shall set forth the extraordinary circumstances in  
24 the record if it does not order restitution.

25       (~~(16)~~) (17) As a part of any sentence, the court may impose and  
26 enforce an order that relates directly to the circumstances of the  
27 crime for which the offender has been convicted, prohibiting the  
28 offender from having any contact with other specified individuals or a  
29 specific class of individuals for a period not to exceed the maximum

1 allowable sentence for the crime, regardless of the expiration of the  
2 offender's term of community supervision or community placement.

3       (~~(17)~~) (18) In any sentence of partial confinement, the court may  
4 require the defendant to serve the partial confinement in work release  
5 or in a program of home detention.

6       (~~(18)~~) (19) All court-ordered legal financial obligations  
7 collected by the department and remitted to the county clerk shall be  
8 credited and paid where restitution is ordered. Restitution shall be  
9 paid prior to any other payments of monetary obligations.