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**SUBSTITUTE HOUSE BILL 2171**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Corrections (originally sponsored by Representatives McMahan, Sheahan, Delvin, Costa, Morris, Blanton, Quall, Dickerson, Thompson and Hargrove; by request of Department of Corrections)

Read first time 01/19/96.

1 AN ACT Relating to no-contact restrictions on sentences; amending  
2 RCW 9.94A.120; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** With this act the legislature is clarifying  
5 existing statutory language regarding when no-contact orders go into  
6 effect. Accordingly, the legislature intends for this act to be given  
7 retroactive effect to the greatest extent consistent with defendants'  
8 constitutional rights.

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

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

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

16 (2) The court may impose a sentence outside the standard sentence  
17 range for that offense if it finds, considering the purpose of this

1 chapter, that there are substantial and compelling reasons justifying  
2 an exceptional sentence.

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

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

32 (5) In sentencing a first-time offender the court may waive the  
33 imposition of a sentence within the sentence range and impose a  
34 sentence which may include up to ninety days of confinement in a  
35 facility operated or utilized under contract by the county and a  
36 requirement that the offender refrain from committing new offenses.  
37 The sentence may also include up to two years of community supervision,  
38 which, in addition to crime-related prohibitions, may include

1 requirements that the offender perform any one or more of the  
2 following:

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

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

7 (c) Pursue a prescribed, secular course of study or vocational  
8 training;

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

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

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

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

18 (i) The offender is convicted of the manufacture, delivery, or  
19 possession with intent to manufacture or deliver a controlled substance  
20 classified in Schedule I or II that is a narcotic drug or a felony that  
21 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
22 criminal solicitation, or criminal conspiracy to commit such crimes,  
23 and the violation does not involve a sentence enhancement under RCW  
24 9.94A.310 (3) or (4);

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

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

31 (b) If the midpoint of the standard range is greater than one year  
32 and the sentencing judge determines that the offender is eligible for  
33 this option and that the offender and the community will benefit from  
34 the use of the special drug offender sentencing alternative, the judge  
35 may waive imposition of a sentence within the standard range and impose  
36 a sentence that must include a period of total confinement in a state  
37 facility for one-half of the midpoint of the standard range. During  
38 incarceration in the state facility, offenders sentenced under this  
39 subsection shall undergo a comprehensive substance abuse assessment and

1 receive, within available resources, treatment services appropriate for  
2 the offender. The treatment services shall be designed by the division  
3 of alcohol and substance abuse of the department of social and health  
4 services, in cooperation with the department of corrections. If the  
5 midpoint of the standard range is twenty-four months or less, no more  
6 than three months of the sentence may be served in a work release  
7 status. The court shall also impose one year of concurrent community  
8 custody and community supervision that must include appropriate  
9 outpatient substance abuse treatment, crime-related prohibitions  
10 including a condition not to use illegal controlled substances, and a  
11 requirement to submit to urinalysis or other testing to monitor that  
12 status. The court may require that the monitoring for controlled  
13 substances be conducted by the department or by a treatment  
14 alternatives to (({a})) street crime program or a comparable court or  
15 agency-referred program. The offender may be required to pay thirty  
16 dollars per month while on community custody to offset the cost of  
17 monitoring. In addition, the court shall impose three or more of the  
18 following conditions:

- 19 (i) Devote time to a specific employment or training;
  - 20 (ii) Remain within prescribed geographical boundaries and notify  
21 the court or the community corrections officer before any change in the  
22 offender's address or employment;
  - 23 (iii) Report as directed to a community corrections officer;
  - 24 (iv) Pay all court-ordered legal financial obligations;
  - 25 (v) Perform community service work;
  - 26 (vi) Stay out of areas designated by the sentencing judge.
- 27 (c) If the offender violates any of the sentence conditions in (b)  
28 of this subsection, the department shall impose sanctions  
29 administratively, with notice to the prosecuting attorney and the  
30 sentencing court. Upon motion of the court or the prosecuting  
31 attorney, a violation hearing shall be held by the court. If the court  
32 finds that conditions have been willfully violated, the court may  
33 impose confinement consisting of up to the remaining one-half of the  
34 midpoint of the standard range. All total confinement served during  
35 the period of community custody shall be credited to the offender,  
36 regardless of whether the total confinement is served as a result of  
37 the original sentence, as a result of a sanction imposed by the  
38 department, or as a result of a violation found by the court. The term

1 of community supervision shall be tolled by any period of time served  
2 in total confinement as a result of a violation found by the court.

3 (d) The department shall determine the rules for calculating the  
4 value of a day fine based on the offender's income and reasonable  
5 obligations which the offender has for the support of the offender and  
6 any dependents. These rules shall be developed in consultation with  
7 the administrator for the courts, the office of financial management,  
8 and the commission.

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

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

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

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

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

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

37 (C) Monitoring plans, including any requirements regarding living  
38 conditions, lifestyle requirements, and monitoring by family members  
39 and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

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

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

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

- 36 (I) Devote time to a specific employment or occupation;
- 37 (II) Remain within prescribed geographical boundaries and notify  
38 the court or the community corrections officer prior to any change in  
39 the offender's address or employment;

1 (III) Report as directed to the court and a community corrections  
2 officer;

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

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

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

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

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

38 (vi) Except as provided in (a)(vii) of this subsection, after July  
39 1, 1991, examinations and treatment ordered pursuant to this subsection

1 shall only be conducted by sex offender treatment providers certified  
2 by the department of health pursuant to chapter 18.155 RCW.

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

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

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

24 Except for an offender who has been convicted of a violation of RCW  
25 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
26 before the expiration of his or her term of confinement, the department  
27 of corrections may request the court to convert the balance of  
28 confinement to community supervision and to place conditions on the  
29 offender including crime-related prohibitions and requirements that the  
30 offender perform any one or more of the following:

- 31 (i) Devote time to a specific employment or occupation;
- 32 (ii) Remain within prescribed geographical boundaries and notify  
33 the court or the community corrections officer prior to any change in  
34 the offender's address or employment;
- 35 (iii) Report as directed to the court and a community corrections  
36 officer;
- 37 (iv) Undergo available outpatient treatment.

38 If the offender violates any of the terms of his or her community  
39 supervision, the court may order the offender to serve out the balance

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

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

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

15 (9)(a) When a court sentences a person to a term of total  
16 confinement to the custody of the department of corrections for an  
17 offense categorized as a sex offense or a serious violent offense  
18 committed after July 1, 1988, but before July 1, 1990, assault in the  
19 second degree, assault of a child in the second degree, any crime  
20 against a person where it is determined in accordance with RCW  
21 9.94A.125 that the defendant or an accomplice was armed with a deadly  
22 weapon at the time of commission, or any felony offense under chapter  
23 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
24 committed on or after July 1, 1988, the court shall in addition to the  
25 other terms of the sentence, sentence the offender to a one-year term  
26 of community placement beginning either upon completion of the term of  
27 confinement or at such time as the offender is transferred to community  
28 custody in lieu of earned early release in accordance with RCW  
29 9.94A.150 (1) and (2). When the court sentences an offender under this  
30 subsection to the statutory maximum period of confinement then the  
31 community placement portion of the sentence shall consist entirely of  
32 such community custody to which the offender may become eligible, in  
33 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
34 custody actually served shall be credited against the community  
35 placement portion of the sentence.

36 (b) When a court sentences a person to a term of total confinement  
37 to the custody of the department of corrections for an offense  
38 categorized as a sex offense or serious violent offense committed on or  
39 after July 1, 1990, the court shall in addition to other terms of the

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

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

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

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

22 (iv) An offender in community custody shall not unlawfully possess  
23 controlled substances;

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

26 (vi) The residence location and living arrangements are subject to  
27 the prior approval of the department of corrections during the period  
28 of community placement.

29 (c) The court may also order any of the following special  
30 conditions:

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

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

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

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

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

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

5 (10) If the court imposes a sentence requiring confinement of  
6 thirty days or less, the court may, in its discretion, specify that the  
7 sentence be served on consecutive or intermittent days. A sentence  
8 requiring more than thirty days of confinement shall be served on  
9 consecutive days. Local jail administrators may schedule court-ordered  
10 intermittent sentences as space permits.

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

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

36 (13) All offenders sentenced to terms involving community  
37 supervision, community service, community placement, or legal financial  
38 obligation shall be under the supervision of the secretary of the  
39 department of corrections or such person as the secretary may designate

1 and shall follow explicitly the instructions of the secretary including  
2 reporting as directed to a community corrections officer, remaining  
3 within prescribed geographical boundaries, notifying the community  
4 corrections officer of any change in the offender's address or  
5 employment, and paying the supervision fee assessment. The department  
6 may require offenders to pay for special services rendered on or after  
7 July 25, 1993, including electronic monitoring, day reporting, and  
8 telephone reporting, dependent upon the offender's ability to pay. The  
9 department may pay for these services for offenders who are not able to  
10 pay.

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

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

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

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

37 (18) As a part of any sentence, the court may impose and enforce an  
38 order that relates directly to the circumstances of the crime for which  
39 the offender has been convicted, prohibiting the offender from having

1 any contact with other specified individuals or a specific class of  
2 individuals for a period commencing upon the signing of the judgment  
3 and sentence and not to exceed the maximum allowable sentence for the  
4 crime, regardless of the expiration of the offender's term of community  
5 supervision or community placement.

6 (19) In any sentence of partial confinement, the court may require  
7 the defendant to serve the partial confinement in work release, in a  
8 program of home detention, on work crew, or in a combined program of  
9 work crew and home detention.

10 (20) All court-ordered legal financial obligations collected by the  
11 department and remitted to the county clerk shall be credited and paid  
12 where restitution is ordered. Restitution shall be paid prior to any  
13 other payments of monetary obligations.

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