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**SUBSTITUTE HOUSE BILL 2703**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Morris, Winsley, Leonard, Prentice, Ebersole, Schmidt, Miller, Belcher, G. Cole, Rust, Inslee, Ogden, Wang, Pruitt, Appelwick, Spanel, Wineberry, J. Kohl, Brough, Basich, Valle, Paris, Van Luven, Bowman, Jones, Fraser, Mitchell, Brekke, Roland, Orr and Anderson)

Read first time 02/07/92.

1 AN ACT Relating to reducing the sentence of a person convicted of  
2 murder who alleges that the murder was in response to the victim's  
3 continuing pattern of physical or sexual abuse of the person or the  
4 person's children; amending RCW 9.95.011 and 9.95.040; adding new  
5 sections to chapter 9.95 RCW; adding a new section to chapter 9.94A  
6 RCW; adding a new section to chapter 72.02 RCW; and declaring an  
7 emergency.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.95 RCW  
10 to read as follows:

11 (1) As provided in this section, an inmate convicted of murder may  
12 petition the indeterminate sentence review board to review the inmate's  
13 sentence if the inmate was sentenced for a murder committed prior to  
14 July 23, 1989, the effective date of section 1, chapter 408, Laws of

1 1989 as codified in RCW 9.94A.390(1)(h), which provides that the  
2 sentencing court may consider as a mitigating factor evidence that the  
3 defendant or the defendant's children suffered a continuing pattern of  
4 physical or sexual abuse by the victim of the offense and the offense  
5 was a response to that abuse.

6 (2) If the inmate was convicted of a murder committed prior to July  
7 1, 1984, and the inmate is under the jurisdiction of the indeterminate  
8 sentence review board, the inmate may petition the board for review of  
9 the inmate's minimum term and parole eligibility date under section 2  
10 of this act. The board shall complete its review of petitions and  
11 render its decisions no later than October 1, 1993.

12 (3) If the inmate was convicted of a murder committed after June  
13 30, 1984, but before July 23, 1989, the inmate may petition the  
14 indeterminate sentence review board to review the inmate's sentence and  
15 make a recommendation to the sentencing court, or the court's  
16 successor, for a reduction in the inmate's sentence on the basis that  
17 the inmate would have been eligible for a mitigated sentence below the  
18 sentence imposed if RCW 9.94A.390(1)(h) had been in effect when the  
19 inmate committed the crime. The board shall complete its review of the  
20 petitions and submit recommendations to the sentencing courts or their  
21 successors by October 1, 1993.

22 (4) When conducting the reviews under subsections (2) and (3) of  
23 this section, the board shall solicit recommendations from the  
24 prosecuting attorneys of the counties where the inmates were convicted,  
25 and may accept input from other interested parties.

26 (5) For the limited purpose and period specified in this section  
27 and section 2 of this act, the indeterminate sentence review board  
28 shall review submitted petitions. The board may review petitions of  
29 inmates who qualify for review under this section regardless of whether

1 the petitioners committed their crimes on, before, or after July 1,  
2 1984.

3 (6) If the inmate is under the jurisdiction of the indeterminate  
4 sentence review board, the board shall conduct the review pursuant to  
5 section 2 of this act. If the inmate was sentenced pursuant to chapter  
6 9.94A RCW for a murder committed after June 30, 1984, the board shall  
7 conduct the review and if appropriate make recommendations to the  
8 sentencing court under section 5 of this act.

9 (7) The board shall consider petitions for review of sentences of  
10 defendants convicted of murder if the petition alleges the following:

11 (a) The inmate was convicted for murder committed prior to the  
12 effective date of RCW 9.94A.390(1)(h); and

13 (b) RCW 9.94A.390(1)(h) would have provided a basis for the  
14 defendant to seek a mitigated sentence; and

15 (c) The sentencing court when determining what sentence to impose,  
16 did not consider evidence that the victim subjected the defendant or  
17 the defendant's children to a continuing pattern of sexual or physical  
18 abuse and the murder was in response to that abuse.

19 (8) An inmate who seeks to have his or her sentence reviewed under  
20 this section and section 2 of this act must petition the board for  
21 review no later than October 1, 1992. The petition may be made by a  
22 letter requesting review.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.95 RCW  
24 to read as follows:

25 (1) If an inmate files a petition for review under section 1 of  
26 this act, the board shall review the duration of the inmate's  
27 confinement, including review of the minimum term and parole  
28 eligibility review dates. The board shall consider whether:

1 (a) The inmate was convicted for a murder committed prior to the  
2 effective date of RCW 9.94A.390(1)(h);

3 (b) RCW 9.94A.390(1)(h), if effective when the defendant committed  
4 the crime, would have provided a basis for the defendant to seek a  
5 mitigated sentence; and

6 (c) The sentencing court and prosecuting attorney, when making  
7 their minimum term recommendations, considered evidence that the victim  
8 subjected the defendant or the defendant's children to a continuing  
9 pattern of sexual or physical abuse and the murder was in response to  
10 that abuse.

11 (2) The board may reset the minimum term and parole eligibility  
12 review date of an inmate convicted of murder if the board finds that  
13 had RCW 9.94A.390(1)(h) been effective when the defendant committed the  
14 crime, the defendant may have received an exceptional mitigating  
15 sentence.

16 **Sec. 3.** RCW 9.95.011 and 1986 c 224 s 7 are each amended to read  
17 as follows:

18 When the court commits a convicted person to the department of  
19 corrections on or after July 1, 1986, for an offense committed before  
20 July 1, 1984, the court shall, at the time of sentencing or revocation  
21 of probation, fix the minimum term. The term so fixed shall not exceed  
22 the maximum sentence provided by law for the offense of which the  
23 person is convicted.

24 The court shall attempt to set the minimum term reasonably  
25 consistent with the purposes, standards, and sentencing ranges adopted  
26 under RCW 9.94A.040, but the court is subject to the same limitations  
27 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
28 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The

1 court's minimum term decision is subject to review to the same extent  
2 as a minimum term decision by the parole board before July 1, 1986.

3 Thereafter, the expiration of the minimum term set by the court  
4 minus any time credits earned under RCW 9.95.070 and 9.95.110  
5 constitutes the parole eligibility review date, at which time the board  
6 may consider the convicted person for parole under RCW 9.95.100 and  
7 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
8 board's authority to reduce or increase the minimum term, once set by  
9 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
10 9.95.100, 9.95.115, (~~(or)~~) 9.95.125, or section 2 of this act.

11 **Sec. 4.** RCW 9.95.040 and 1986 c 224 s 9 are each amended to read  
12 as follows:

13 The board shall fix the duration of confinement for persons  
14 committed by the court before July 1, 1986, for crimes committed before  
15 July 1, 1984. Within six months after the admission of the convicted  
16 person to the penitentiary, reformatory, or such other state penal  
17 institution as may hereafter be established, the board shall fix the  
18 duration of his or her confinement. The term of imprisonment so fixed  
19 shall not exceed the maximum provided by law for the offense of which  
20 he or she was convicted or the maximum fixed by the court where the law  
21 does not provide for a maximum term.

22 Subject to section 2 of this act, the following limitations are  
23 placed on the board or the court for persons committed to prison on or  
24 after July 1, 1986, for crimes committed before July 1, 1984, with  
25 regard to fixing the duration of confinement in certain cases,  
26 notwithstanding any provisions of law specifying a lesser sentence:

27 (1) For a person not previously convicted of a felony but armed  
28 with a deadly weapon at the time of the commission of his or her

1 offense, the duration of confinement shall not be fixed at less than  
2 five years.

3 (2) For a person previously convicted of a felony either in this  
4 state or elsewhere and who was armed with a deadly weapon at the time  
5 of the commission of his or her offense, the duration of confinement  
6 shall not be fixed at less than seven and one-half years.

7 The words "deadly weapon," as used in this section include, but are  
8 not limited to, any instrument known as a blackjack, sling shot, billy,  
9 sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver,  
10 or any other firearm, any knife having a blade longer than three  
11 inches, any razor with an unguarded blade, any metal pipe or bar used  
12 or intended to be used as a club, any explosive, and any weapon  
13 containing poisonous or injurious gas.

14 (3) For a person convicted of being an habitual criminal within the  
15 meaning of the statute which provides for mandatory life imprisonment  
16 for such habitual criminals, the duration of confinement shall not be  
17 fixed at less than fifteen years. The board shall retain jurisdiction  
18 over such convicted person throughout his or her natural life unless  
19 the governor by appropriate executive action orders otherwise.

20 (4) Any person convicted of embezzling funds from any institution  
21 of public deposit of which he or she was an officer or stockholder, the  
22 duration of confinement shall be fixed at not less than five years.

23 Except when an inmate of the reformatory, penitentiary, or such  
24 other penal institution as may hereafter be established has been  
25 convicted of murder in the first or second degree, the board may parole  
26 an inmate prior to the expiration of a mandatory minimum term, provided  
27 such inmate has demonstrated a meritorious effort in rehabilitation and  
28 at least two-thirds of the board members concur in such action:  
29 PROVIDED, That any inmate who has a mandatory minimum term and is  
30 paroled prior to the expiration of such term according to the

1 provisions of this chapter shall not receive a conditional release from  
2 supervision while on parole until after the mandatory minimum term has  
3 expired.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW  
5 to read as follows:

6 (1) The sentencing court shall consider recommendations from the  
7 indeterminate sentence review board for resentencing defendants  
8 convicted of murder if the indeterminate sentence review board advises  
9 the sentencing court of the following:

10 (a) The defendant was convicted for a murder committed prior to the  
11 effective date of RCW 9.94A.390(1)(h), which provides that the  
12 sentencing court may consider as a mitigating factor evidence that the  
13 defendant or the defendant's children suffered a continuing pattern of  
14 physical or sexual abuse by the victim of the offense and the offense  
15 was a response to that abuse; and

16 (b) RCW 9.94A.390(1)(h), if effective when the defendant committed  
17 the crime, would have provided a basis for the defendant to seek a  
18 mitigated sentence; and

19 (c) Upon review of the sentence, the indeterminate sentence review  
20 board believes that the sentencing court, or the court's successor,  
21 when originally sentencing the defendant for the murder, did not  
22 consider evidence that the victim subjected the defendant or the  
23 defendant's children to a continuing pattern of sexual or physical  
24 abuse and the murder was in response to that abuse.

25 (2) The sentencing court may resentence the defendant in light of  
26 RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence  
27 pursuant to that provision. Prior to resentencing, the court shall  
28 consider any other recommendation and evidence concerning the issue of  
29 whether the defendant committed the crime in response to abuse.

1 (3) The sentencing court shall render its decision regarding  
2 reducing the inmate's sentence no later than six months after receipt  
3 of the indeterminate sentence review board's recommendation to reduce  
4 the sentence imposed.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.02 RCW  
6 to read as follows:

7 The department shall advise all inmates in the custody of the  
8 department who were convicted of a murder that the inmate committed  
9 prior to July 23, 1989, about the provisions in sections 1 through 5 of  
10 this act. The department shall advise the inmates of the method and  
11 deadline for submitting petitions to the indeterminate sentence review  
12 board for review of the inmate's sentence. The department shall issue  
13 the notice to the inmates no later than June 1, 1992.

14 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and shall take  
17 effect immediately.