
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0026.1/13

ATTY/TYPIST: KT:seg

BRIEF DESCRIPTION: Providing a minimum term sentence for certain persistent offenders.

AN ACT Relating to persistent offenders; amending RCW 9.94A.501, 9.94A.570, and 9.95.435; adding a new section to chapter 9.94A RCW; adding new sections to chapter 9.95 RCW; and prescribing penalties.

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

Sec. 1. RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each amended to read as follows:

(1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been plead and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e) Has a current conviction for a domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670; (~~(e)~~)

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Has been released by the indeterminate sentence review board pursuant to section 4 of this act.

(5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011.

Sec. 2. RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read as follows:

(1) Notwithstanding the statutory maximum sentence or any other provision of this chapter and except as provided in subsection (2) of this section, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 ~~((1))~~ (2), (3), ~~((4), (6))~~ (5), (7), and (8), ~~((or (9)))~~ or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except:

~~((1))~~ (a) In the case of an offender in need of emergency medical treatment; ~~((or (2)))~~

(b) For the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or

(c) When authorized under sections 3 and 4 of this act and RCW 9.95.435.

(2)(a) A persistent offender shall be sentenced under this subsection if the persistent offender does not have: (i) A prior or current conviction for a class A felony, assault in the second degree, or a

sex offense; (ii) a federal or out-of-state conviction for an offense that under the laws of this state would be considered a class A felony, assault in the second degree, or a sex offense; (iii) a prior or current conviction with a deadly weapon verdict under RCW 9.94A.825 or 9.95.015; (iv) a federal or out-of-state conviction for which the offender would be required to register as a sex offender while residing in the state of conviction; (v) a federal or out-of-state conviction that included a finding, whether as an element of the offense or for the purpose of imposing a sentencing enhancement, that offender was armed with a deadly weapon, with a dangerous weapon, or with a firearm, as those terms are defined in the jurisdiction of conviction; or (vi) a federal or out-of-state conviction for an offense for which the sentencing court imposed a sentence of incarceration, supervision, or probation, or a combination thereof, of ten or more years.

(b) Upon a finding that the persistent offender is subject to sentencing under (a) of this subsection, the court shall impose a sentence to a maximum term and a minimum term. The maximum term shall consist of a maximum sentence of life without the possibility of early release. The minimum term shall consist of the greater of fifteen years, the high end of the standard range for the current offense, or an exceptional sentence above the standard range pursuant to RCW 9.94A.535. An offender serving a term of confinement under this subsection is not eligible for earned early release or any reduction in the minimum term imposed by the court.

(c) When imposing sentence under (b) of this subsection, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement. As part of any sentence, the court shall also require the offender to comply with any conditions imposed by the board under chapter 9.95 RCW. After the offender has served the mandatory minimum term in total confinement without reduction, the board shall have the authority to conditionally release the offender pursuant to section 4 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW to read as follows:

The board shall have jurisdiction over any offender in custody who: (1) Was sentenced as a persistent offender prior to the effective date of this section; and (2) does not have: (i) A prior or current conviction for a class A felony, assault in the second degree, or a sex offense; (ii) a federal or out-of-state conviction for an offense that under the laws of this state would be considered a class A felony, assault in the second degree, or a sex offense; (iii) a prior or current conviction with a deadly weapon verdict under RCW 9.94A.825 or 9.95.015; (iv) a federal or out-of-state conviction for which the offender would be required to register as a sex offender while residing in the state of conviction; (v) a federal or out-of-state conviction that included a finding, whether as an element of the offense or for the purpose of imposing a sentencing enhancement, that offender was armed with a deadly weapon, with a dangerous weapon, or with a firearm, as those terms are defined in the jurisdiction of conviction; or (vi) a federal or out-of-state conviction for an offense for which the sentencing court imposed a sentence of incarceration, supervision, or probation, or a combination thereof, of ten or more years. Notwithstanding the terms of the judgment and sentence, after such an offender has served fifteen years in total confinement without reduction under sentence as a persistent offender, the board shall have the authority to grant conditional release pursuant to section 4 of this act. The board shall impose conditions of community custody consistent with RCW 9.94A.703. The offender shall be under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

NEW SECTION. **Sec. 4.** A new section is added to chapter 9.95 RCW to read as follows:

(1) The board shall not release a persistent offender pursuant to section 3 of this act unless in its opinion his or her rehabilitation has been completed and he or she is a fit subject for release. The

board shall start with the presumption that the offender is to remain in total confinement for the maximum sentence of life. The offender may file his or her petition in writing with the board anytime after he or she has served the minimal sentence as defined in RCW 9.94A.570(2)(b). The offender must prove by clear and convincing evidence that his or her rehabilitation is complete and that he or she is fit for release. The board must then find by clear and convincing evidence that the offender has shown that he or she is completely rehabilitated and is fit for release. The board must document its decision in a report to the secretary. Upon denial of an offender's petition by the board, the offender shall wait a minimum term, as set by the board, to appear in front of the board for a subsequent release hearing. The board shall set a minimum term, not to exceed five years from the date on which the petition was denied, by which the board must schedule a subsequent release hearing. The offender is not required to submit a new petition for subsequent release hearings.

(2) Upon receipt of an offender's petition for release under this section, the board shall make all reasonable efforts to notify by any reasonable means any of the offender's victims for those offenses that qualified the offender as a persistent offender. The board shall provide notification to the victim at least thirty days prior to any scheduled release hearing in which the offender's petition shall be heard by the board so that the victim has the opportunity to provide his or her input to the board on the issue of the offender's release. The board shall consider any input provided by the victim regarding the offender's petition.

As part of the board's reasonable efforts to notify the victim in writing of the offender's pending petition, the board shall provide notification in writing of the offender's petition to the prosecuting attorney for the county in which the offender was convicted of his or her most recent most serious offense. The board shall provide notice to the prosecuting attorney no later than thirty days prior to any scheduled release hearing by the board.

(3) Once the initial petition seeking release under this section has been filed by the offender, the department shall conduct, and the

offender shall participate in, an examination of the offender prior to each release hearing. The department shall complete an examination within ninety days of receipt of the offender's petition, or at least ninety days prior to any subsequently scheduled release hearings, and provide the evaluation to the board for review. The board may consider an offender's failure to participate in the examination in its determination as to whether the offender should be released.

(4) If conditional release is granted, the board shall retain jurisdiction for the remainder of the offender's life with the power to revoke the conditional release if the offender violates the imposed conditions. An offender released by the board shall be monitored by the department for compliance. The board shall impose the conditions and instructions provided for in RCW 9.94A.704 should the board decide to release the offender. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(5) Whenever the board or a community corrections officer of this state has reason to believe an offender released under subsection (1) of this section has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board in a written report to the board, with recommendations.

NEW SECTION. **Sec. 5.** A new section is added to chapter 9.95 RCW to read as follows:

If conditional release is granted by the board under section 4 of this act, the governor shall have the opportunity to reject the board's decision in writing within sixty days of the board's decision. If the governor rejects the board's decision, the offender's petition for release is denied. If the governor fails to act on the board's

decision within sixty days, the offender's petition for release is denied. If the offender's petition for release is denied, the board shall set a new minimum term not to exceed five years from the date on which the petition was denied.

Sec. 6. RCW 9.95.435 and 2007 c 363 s 3 are each amended to read as follows:

(1)(a) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(b) If an offender released by the board under section 4 of this act is alleged to have violated any condition or requirement of community custody, the offender shall be transferred to confinement in a correctional institution owned, operated by, or operated under contract with the state while awaiting the disposition of the hearing specified in subsection (3) of this section.

(c) If an offender released by the board under section 4 of this act is alleged to have violated any three conditions or requirements of community custody within a six-month period, the offender shall be transferred to confinement in a correctional institution owned, operated by, or operated under contract with the state while awaiting the disposition of the hearing specified in subsection (3) of this section.

(d) If an offender released by the board under section 4 of this act is convicted of any felony offense, that offender shall be transferred to confinement in a correctional institution owned, operated by, or operated under contract with the state while awaiting the disposition of the hearing specified in subsection (3) of this section.

(2)(a) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home

detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 or section 4 of this act violates any condition or requirement of community custody.

(b) If the board finds pursuant to the hearing specified in subsection (3) of this section, that an offender released by the board under section 4 of this act violated any condition or requirement of community custody, the board may revoke the offender's conditional release and impose the remaining portion of the offender's life sentence. The offender may repetition the board for conditional release pursuant to section 4 of this act after the offender has served at least five years in total confinement, without reduction, from the date on which the board revoked the offender's conditional release. If the board finds that a violation of a condition or requirement of community custody has been proved by a preponderance of the evidence, but is not sufficient cause for revocation of the offender's release from community custody, the board may, in its discretion, reinstate the offender on community custody. If the board reinstates the offender on community custody, the board may impose upon the offender sanctions listed under (a) of this subsection as well as additional conditions or requirements of community custody.

(c) If the board finds pursuant to the hearing specified in subsection (3) of this section, that an offender released by the board under section 4 of this act has violated three conditions or requirements of community custody within a six-month period, the board shall revoke the offender's conditional release and impose the remaining portion of the offender's life sentence. The offender may repetition the board for conditional release pursuant to section 4 of this act after the offender has served at least five years in total confinement, without reduction, from the date on which the board

revoked the offender's conditional release.

(d) If the board finds pursuant to the hearing specified in subsection (3) of this section, that an offender released by the board under section 4 of this act has been convicted of a most serious offense under RCW 9.94A.030(32), the board shall revoke the offender's conditional release and impose the remaining portion of the offender's life sentence. These offenders shall not be eligible for release. If the board finds that the offender has been convicted of any felony that is not a most serious offense under RCW 9.94A.030(32), the board shall revoke the offender's conditional release and impose the remaining portion of the offender's life sentence. The offender may repetition the board for conditional release pursuant to section 4 of this act after the offender has served at least ten years in total confinement, without reduction, from the date on which the board revoked the offender's conditional release.

(3) If an offender released by the board under RCW 9.95.420 or section 4 of this act is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with findings and conclusions which include the evidence relied upon, and the reasons

the particular sanction was imposed. The board shall notify the offender of the right to appeal the sanction and the right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the presiding hearing officer, if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the presiding hearing officer.

(5) Within seven days after the presiding hearing officer's decision, the offender may appeal the decision to the full board or to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of

conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.