
SENATE BILL 5291

State of Washington

61st Legislature

2009 Regular Session

By Senator Hargrove

Read first time 01/20/09. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the release and supervision of offenders based
2 on risk assessments; amending RCW 9.94A.501, and 9.94A.728; amending
3 2008 c 231 s 6 (uncodified); repealing 2008 c 231 s 60 (uncodified);
4 and providing an effective date.

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

6 **Sec. 1.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read
7 as follows:

8 (1) When the department performs a risk assessment pursuant to RCW
9 9.94A.500, or to determine a person's conditions of supervision, the
10 risk assessment shall classify the offender or a probationer sentenced
11 in superior court into one of at least four risk categories.

12 (2) The department shall supervise every offender sentenced to a
13 term of community custody and every misdemeanor and gross misdemeanor
14 probationer ordered by a superior court to probation under the
15 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
16 9.95.210:

17 (a) Whose risk assessment places that offender or probationer in
18 one of the two highest risk categories; or

19 (b) Regardless of the offender's or probationer's risk category if:

1 (i) The offender's or probationer's current conviction is for:
2 (A) A sex offense;
3 (B) A violent offense;
4 (C) A crime against persons as defined in RCW 9.94A.411;
5 (D) A felony that is domestic violence as defined in RCW 10.99.020;
6 (E) A violation of RCW 9A.52.025 (residential burglary);
7 (F) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.401 by manufacture or delivery or possession with
9 intent to deliver methamphetamine; or

10 (G) A violation of, or an attempt, solicitation, or conspiracy to
11 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

12 (ii) The offender or probationer has a prior conviction for:

13 (A) A sex offense;

14 (B) A violent offense;

15 (C) A crime against persons as defined in RCW 9.94A.411;

16 (D) A felony that is domestic violence as defined in RCW 10.99.020;

17 (E) A violation of RCW 9A.52.025 (residential burglary);

18 (F) A violation of, or an attempt, solicitation, or conspiracy to
19 violate, RCW 69.50.401 by manufacture or delivery or possession with
20 intent to deliver methamphetamine; or

21 (G) A violation of, or an attempt, solicitation, or conspiracy to
22 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

23 (iii) The conditions of the offender's community custody or the
24 probationer's supervision include chemical dependency treatment;

25 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
26 or

27 (v) The offender is subject to supervision pursuant to RCW
28 9.94A.745.

29 (3) The department is not authorized to, and may not, supervise any
30 offender sentenced to a term of community custody or any probationer
31 unless the offender or probationer is one for whom supervision is
32 required under subsection (2) of this section.

33 (~~(4) This section expires July 1, 2010.~~)

34 **Sec. 2.** 2008 c 231 s 6 (uncodified) is amended to read as follows:

35 The existing sentencing reform act contains numerous provisions for
36 supervision of different types of offenders. This duplication has
37 caused great confusion for judges, lawyers, offenders, and the

1 department of corrections, and often results in inaccurate sentences.
2 The clarifications in this act are intended to support continued
3 discussions by the sentencing guidelines commission with the courts and
4 the criminal justice community to identify and propose policy changes
5 that will further simplify and improve the sentencing reform act
6 relating to the supervision of offenders. The sentencing guidelines
7 commission shall submit policy change proposals to the legislature on
8 or before December 1, 2008.

9 Sections 7 through 58 of this act are intended to simplify the
10 supervision provisions of the sentencing reform act and increase the
11 uniformity of its application. These sections are not intended to
12 either increase or decrease the authority of sentencing courts or the
13 department relating to supervision, except for those provisions
14 instructing the court to apply the provisions of the current community
15 custody law to offenders sentenced after July 1, 2009, but who
16 committed their crime prior to August 1, 2009, to the extent that such
17 application is constitutionally permissible.

18 This will effect a change for offenders who committed their crimes
19 prior to the offender accountability act, chapter 196, Laws of 1999.
20 These offenders will be ordered to a term of community custody rather
21 than community placement or community supervision. To the extent
22 constitutionally permissible, the terms of the offender's supervision
23 will be as provided in current law. With the exception of this change,
24 the legislature does not intend to make, and no provision of sections
25 7 through 58 of this act may be construed as making, a substantive
26 change to the supervision provisions of the sentencing reform act.

27 ~~((It is the intent of the legislature to reaffirm that section 3,~~
28 ~~chapter 379, Laws of 2003, expires July 1, 2010.))~~

29 **Sec. 3.** RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read
30 as follows:

31 No person serving a sentence imposed pursuant to this chapter and
32 committed to the custody of the department shall leave the confines of
33 the correctional facility or be released prior to the expiration of the
34 sentence except as follows:

35 (1) Except as otherwise provided for in subsection (2) of this
36 section, the term of the sentence of an offender committed to a
37 correctional facility operated by the department may be reduced by

1 earned release time in accordance with procedures that shall be
2 developed and promulgated by the correctional agency having
3 jurisdiction in which the offender is confined. The earned release
4 time shall be for good behavior and good performance, as determined by
5 the correctional agency having jurisdiction. The correctional agency
6 shall not credit the offender with earned release credits in advance of
7 the offender actually earning the credits. Any program established
8 pursuant to this section shall allow an offender to earn early release
9 credits for presentence incarceration. If an offender is transferred
10 from a county jail to the department, the administrator of a county
11 jail facility shall certify to the department the amount of time spent
12 in custody at the facility and the amount of earned release time. An
13 offender who has been convicted of a felony committed after July 23,
14 1995, that involves any applicable deadly weapon enhancements under RCW
15 9.94A.533 (3) or (4), or both, shall not receive any good time credits
16 or earned release time for that portion of his or her sentence that
17 results from any deadly weapon enhancements.

18 (a) In the case of an offender convicted of a serious violent
19 offense, or a sex offense that is a class A felony, committed on or
20 after July 1, 1990, and before July 1, 2003, the aggregate earned
21 release time may not exceed fifteen percent of the sentence. In the
22 case of an offender convicted of a serious violent offense, or a sex
23 offense that is a class A felony, committed on or after July 1, 2003,
24 the aggregate earned release time may not exceed ten percent of the
25 sentence.

26 (b)(i) In the case of an offender who qualifies under (b)(ii) of
27 this subsection, the aggregate earned release time may not exceed fifty
28 percent of the sentence.

29 (ii) An offender is qualified to earn up to fifty percent of
30 aggregate earned release time under this subsection (1)(b) if he or
31 she:

32 (A) Is classified in one of the two lowest risk categories under
33 (b)(iii) of this subsection;

34 (B) Is not confined pursuant to a sentence for:

35 (I) A sex offense;

36 (II) A violent offense;

37 (III) A crime against persons as defined in RCW 9.94A.411;

1 (IV) A felony that is domestic violence as defined in RCW
2 10.99.020;

3 (V) A violation of RCW 9A.52.025 (residential burglary);

4 (VI) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.401 by manufacture or delivery or possession with
6 intent to deliver methamphetamine; or

7 (VII) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

9 (C) Has no prior conviction for:

10 (I) A sex offense;

11 (II) A violent offense;

12 (III) A crime against persons as defined in RCW 9.94A.411;

13 (IV) A felony that is domestic violence as defined in RCW
14 10.99.020;

15 (V) A violation of RCW 9A.52.025 (residential burglary);

16 (VI) A violation of, or an attempt, solicitation, or conspiracy to
17 violate, RCW 69.50.401 by manufacture or delivery or possession with
18 intent to deliver methamphetamine; or

19 (VII) A violation of, or an attempt, solicitation, or conspiracy to
20 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

21 (D) Participates in programming or activities as directed by the
22 offender's individual reentry plan as provided under RCW 72.09.270 to
23 the extent that such programming or activities are made available by
24 the department; and

25 (E) Has not committed a new felony after July 22, 2007, while under
26 community custody.

27 (iii) For purposes of determining an offender's eligibility under
28 this subsection (1)(b), the department shall perform a risk assessment
29 of every offender committed to a correctional facility operated by the
30 department who has no current or prior conviction for a sex offense, a
31 violent offense, a crime against persons as defined in RCW 9.94A.411,
32 a felony that is domestic violence as defined in RCW 10.99.020, a
33 violation of RCW 9A.52.025 (residential burglary), a violation of, or
34 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
35 manufacture or delivery or possession with intent to deliver
36 methamphetamine, or a violation of, or an attempt, solicitation, or
37 conspiracy to violate, RCW 69.50.406 (delivery of a controlled

1 substance to a minor). The department must classify each assessed
2 offender in one of four risk categories between highest and lowest
3 risk.

4 (iv) The department shall recalculate the earned release time and
5 reschedule the expected release dates for each qualified offender under
6 this subsection (1)(b).

7 (v) This subsection (1)(b) applies retroactively to eligible
8 offenders serving terms of total confinement in a state correctional
9 facility as of July 1, 2003.

10 ~~((vi) This subsection (1)(b) does not apply to offenders convicted
11 after July 1, 2010.))~~

12 (c) In no other case shall the aggregate earned release time exceed
13 one-third of the total sentence;

14 (2)(a) A person convicted of a sex offense, a violent offense, any
15 crime against persons under RCW 9.94A.411(2), or a felony offense under
16 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a
17 program developed by the department, for transfer to community custody
18 in lieu of earned release time pursuant to subsection (1) of this
19 section;

20 (b) The department shall, as a part of its program for release to
21 the community in lieu of earned release, require the offender to
22 propose a release plan that includes an approved residence and living
23 arrangement. All offenders with community custody terms eligible for
24 release to community custody in lieu of earned release shall provide an
25 approved residence and living arrangement prior to release to the
26 community;

27 (c) The department may deny transfer to community custody in lieu
28 of earned release time pursuant to subsection (1) of this section if
29 the department determines an offender's release plan, including
30 proposed residence location and living arrangements, may violate the
31 conditions of the sentence or conditions of supervision, place the
32 offender at risk to violate the conditions of the sentence, place the
33 offender at risk to reoffend, or present a risk to victim safety or
34 community safety. The department's authority under this section is
35 independent of any court-ordered condition of sentence or statutory
36 provision regarding conditions for community custody;

37 (d) If the department denies transfer to community custody in lieu
38 of earned early release pursuant to (c) of this subsection, the

1 department may transfer an offender to partial confinement in lieu of
2 earned early release up to three months. The three months in partial
3 confinement is in addition to that portion of the offender's term of
4 confinement that may be served in partial confinement as provided in
5 this section;

6 (e) An offender serving a term of confinement imposed under RCW
7 9.94A.670(5)(a) is not eligible for earned release credits under this
8 section;

9 (3) An offender may leave a correctional facility pursuant to an
10 authorized furlough or leave of absence. In addition, offenders may
11 leave a correctional facility when in the custody of a corrections
12 officer or officers;

13 (4)(a) The secretary may authorize an extraordinary medical
14 placement for an offender when all of the following conditions exist:

15 (i) The offender has a medical condition that is serious enough to
16 require costly care or treatment;

17 (ii) The offender poses a low risk to the community because he or
18 she is physically incapacitated due to age or the medical condition;
19 and

20 (iii) Granting the extraordinary medical placement will result in
21 a cost savings to the state.

22 (b) An offender sentenced to death or to life imprisonment without
23 the possibility of release or parole is not eligible for an
24 extraordinary medical placement.

25 (c) The secretary shall require electronic monitoring for all
26 offenders in extraordinary medical placement unless the electronic
27 monitoring equipment interferes with the function of the offender's
28 medical equipment or results in the loss of funding for the offender's
29 medical care. The secretary shall specify who shall provide the
30 monitoring services and the terms under which the monitoring shall be
31 performed.

32 (d) The secretary may revoke an extraordinary medical placement
33 under this subsection at any time;

34 (5) The governor, upon recommendation from the clemency and pardons
35 board, may grant an extraordinary release for reasons of serious health
36 problems, senility, advanced age, extraordinary meritorious acts, or
37 other extraordinary circumstances;

1 (6) No more than the final six months of the offender's term of
2 confinement may be served in partial confinement designed to aid the
3 offender in finding work and reestablishing himself or herself in the
4 community. This is in addition to that period of earned early release
5 time that may be exchanged for partial confinement pursuant to
6 subsection (2)(d) of this section;

7 (7) The governor may pardon any offender;

8 (8) The department may release an offender from confinement any
9 time within ten days before a release date calculated under this
10 section;

11 (9) An offender may leave a correctional facility prior to
12 completion of his or her sentence if the sentence has been reduced as
13 provided in RCW 9.94A.870; and

14 (10) Notwithstanding any other provisions of this section, an
15 offender sentenced for a felony crime listed in RCW 9.94A.540 as
16 subject to a mandatory minimum sentence of total confinement shall not
17 be released from total confinement before the completion of the listed
18 mandatory minimum sentence for that felony crime of conviction unless
19 allowed under RCW 9.94A.540, however persistent offenders are not
20 eligible for extraordinary medical placement.

21 NEW SECTION. **Sec. 4.** 2008 c 231 s 60 (uncodified) is hereby
22 repealed.

23 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2009.

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