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**SUBSTITUTE SENATE BILL 6208**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Haugen, Johnson, Bauer, Winsley and Schow)

Read first time 02/02/96.

1 AN ACT Relating to misdemeanor probation services; amending RCW  
2 9.95.210, 9.95.214, 9.92.060, 10.64.120, and 36.01.070; and adding new  
3 sections to chapter 9.95 RCW.

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

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

7 (1) When a superior court places a defendant convicted of a  
8 misdemeanor or gross misdemeanor on probation and orders supervision  
9 under RCW 9.92.060 or 9.95.210, the department of corrections has  
10 initial responsibility for supervision of that defendant.

11 (2) A county legislative authority may assume responsibility for  
12 the supervision of all defendants within its jurisdiction who have been  
13 convicted of a misdemeanor or gross misdemeanor and sentenced to  
14 probation by a superior court. The assumption of responsibility shall  
15 be made by contract with the department of corrections on a biennial  
16 basis.

17 (3) If a county assumes supervision responsibility, the county  
18 shall supervise all superior court misdemeanor probationers within

1 that county for the duration of the biennium, as set forth in the  
2 contract with the department of corrections.

3 (4) A contract between a county legislative authority and the  
4 department of corrections for the transfer of supervision  
5 responsibility must include, at a minimum, the following provisions:

6 (a) The county's agreement to supervise all misdemeanor  
7 probationers who are sentenced by a superior court within that county  
8 and who reside within that county;

9 (b) A reciprocal agreement regarding the supervision of superior  
10 court misdemeanor probationers sentenced in one county but who reside  
11 in another county;

12 (c) The county's agreement to comply with the minimum standards for  
13 classification and supervision of offenders as required under section  
14 2 of this act;

15 (d) The amount of funds available from the department of  
16 corrections to the county for supervision of superior court  
17 misdemeanor probationers, calculated according to a formula  
18 established by the department of corrections;

19 (e) A method for the payment of funds by the department of  
20 corrections to the county;

21 (f) The county's agreement that any funds received by the county  
22 under the contract will be expended only to cover costs of supervision  
23 of superior court misdemeanor probationers;

24 (g) The county's agreement to account to the department of  
25 corrections for the expenditure of all funds received under the  
26 contract and to submit to audits for compliance with the supervision  
27 standards and financial requirements of this section;

28 (h) Provisions regarding rights and remedies in the event of a  
29 possible breach of contract or default by either party; and

30 (i) Provisions allowing for voluntary termination of the contract  
31 by either party, with good cause, after sixty days' written notice.

32 (5) If the contract between the county and the department of  
33 corrections is terminated for any reason, the department of corrections  
34 shall reassume responsibility for supervision of superior court  
35 misdemeanor probationers within that county. In such an event, the  
36 department of corrections retains any and all rights and remedies  
37 available by law and under the contract.

38 (6) The department of corrections is immune from civil liability  
39 for any harm caused by the actions of a superior court misdemeanor

1 probationer who is under the supervision of a county. A county is  
2 immune from civil liability for any harm caused by the actions of a  
3 superior court misdemeanor probationer who is under the supervision of  
4 the department of corrections. The immunity granted under this section  
5 applies regardless of whether the supervising agency is in compliance  
6 with the standards of supervision at the time of the misdemeanor  
7 probationer's actions.

8 (7) The department and its officials and employees, or in cases  
9 where a county assumes supervision responsibility, the county and its  
10 officials and employees, are immune from civil liability for any harm  
11 arising out of the good faith performance of their duties and for any  
12 harm caused by the actions of superior court misdemeanor probationers  
13 under their supervision.

14 (8) If sufficient resources are not available for the department of  
15 corrections, or the county assuming supervision responsibility, to  
16 comply with the minimum standards of supervision required by section 2  
17 of this act, the department of corrections, or the county, is immune  
18 from civil liability for any harm caused by an inability to comply with  
19 the standards of supervision.

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

22 (1) Probation supervision of misdemeanor offenders sentenced in a  
23 superior court must be based upon an offender classification system and  
24 supervision standards.

25 (2) Any entity under contract with the department of corrections  
26 pursuant to section 1 of this act shall establish and maintain a  
27 classification system that:

28 (a) Provides for a standardized assessment of offender risk;

29 (b) Differentiates between higher and lower risk offenders based on  
30 criminal history and current offense;

31 (c) Assigns cases to a level of supervision based on assessed risk;

32 (d) Provides, at a minimum, three levels of supervision;

33 (e) Provides for periodic review of an offender's classification  
34 level during the term of supervision; and

35 (f) Structures the discretion and decision making of supervising  
36 officers.

1 (3) Any entity under contract with the department of corrections  
2 pursuant to section 1 of this act shall establish and maintain  
3 supervision standards that:

4 (a) Identify the frequency and nature of offender contact within  
5 each of at least three classification levels;

6 (b) Provide for a minimum of one face-to-face contact each month  
7 with offenders classified at the highest level of risk;

8 (c) Provide for a minimum of one personal contact per quarter for  
9 lower-risk offenders;

10 (d) Provide for specific reporting requirements for offenders  
11 within each level of the classification system;

12 (e) Assign higher-risk offenders to staff trained to deal with  
13 higher-risk offenders;

14 (f) Verify compliance with sentence conditions imposed by the  
15 court; and

16 (g) Report to the court violations of sentence conditions as  
17 appropriate.

18 (4) The minimum supervision standards established and maintained by  
19 the department of corrections shall provide for no less than one  
20 personal contact per quarter for misdemeanant probationers under its  
21 jurisdiction. For the purposes of this section, "personal contact"  
22 means a personal interaction accomplished either face-to-face or by  
23 telephone.

24 (5) The classification system and supervision standards must be  
25 established and met within the resources available as provided for by  
26 the legislature and the cost of supervision assessments collected, and  
27 may be enhanced by funds otherwise generated by the supervising entity,  
28 except that under no circumstances may an entity under contract with  
29 the department of corrections fall below the standards established by  
30 the department under subsection (4) of this section.

31 **Sec. 3.** RCW 9.95.210 and 1995 1st sp.s. c 19 s 29 are each amended  
32 to read as follows:

33 (1) In granting probation, the superior court may suspend the  
34 imposition or the execution of the sentence and may direct that the  
35 suspension may continue upon such conditions and for such time as it  
36 shall designate, not exceeding the maximum term of sentence or two  
37 years, whichever is longer.

1 (2) In the order granting probation and as a condition thereof, the  
2 superior court may in its discretion imprison the defendant in the  
3 county jail for a period not exceeding one year and may fine the  
4 defendant any sum not exceeding the statutory limit for the offense  
5 committed, and court costs. As a condition of probation, the superior  
6 court shall require the payment of the penalty assessment required by  
7 RCW 7.68.035. The superior court may also require the defendant to  
8 make such monetary payments, on such terms as it deems appropriate  
9 under the circumstances, as are necessary: (a) To comply with any order  
10 of the court for the payment of family support; (b) to make restitution  
11 to any person or persons who may have suffered loss or damage by reason  
12 of the commission of the crime in question or when the offender pleads  
13 guilty to a lesser offense or fewer offenses and agrees with the  
14 prosecutor's recommendation that the offender be required to pay  
15 restitution to a victim of an offense or offenses which are not  
16 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
17 imposed and court costs, including reimbursement of the state for costs  
18 of extradition if return to this state by extradition was required; (d)  
19 following consideration of the financial condition of the person  
20 subject to possible electronic monitoring, to pay for the costs of  
21 electronic monitoring if that monitoring was required by the court as  
22 a condition of release from custody or as a condition of probation; (e)  
23 to contribute to a county or interlocal drug fund; and (f) to make  
24 restitution to a public agency for the costs of an emergency response  
25 under RCW 38.52.430, and may require bonds for the faithful observance  
26 of any and all conditions imposed in the probation.

27 (3) The superior court shall order restitution in all cases where  
28 the victim is entitled to benefits under the crime victims'  
29 compensation act, chapter 7.68 RCW. If the superior court does not  
30 order restitution and the victim of the crime has been determined to be  
31 entitled to benefits under the crime victims' compensation act, the  
32 department of labor and industries, as administrator of the crime  
33 victims' compensation program, may petition the superior court within  
34 one year of imposition of the sentence for entry of a restitution  
35 order. Upon receipt of a petition from the department of labor and  
36 industries, the superior court shall hold a restitution hearing and  
37 shall enter a restitution order.

38 (4) In granting probation, the superior court may order the  
39 probationer to report to the secretary of corrections or such officer

1 as the secretary may designate and as a condition of the probation to  
2 follow the instructions of the secretary. If the county legislative  
3 authority has elected to assume responsibility for the supervision of  
4 superior court misdemeanor probationers within its jurisdiction, the  
5 superior court misdemeanor probationer shall report to a probation  
6 officer employed or contracted for by the county. In cases where a  
7 superior court misdemeanor probationer is sentenced in one county, but  
8 resides within another county, there must be provisions for the  
9 probationer to report to the agency having supervision responsibility  
10 for the probationer's county of residence.

11 (5) If the probationer has been ordered to make restitution and the  
12 superior court has ordered supervision, the officer supervising the  
13 probationer shall make a reasonable effort to ascertain whether  
14 restitution has been made. If the superior court has ordered  
15 supervision and restitution has not been made as ordered, the officer  
16 shall inform the prosecutor of that violation of the terms of probation  
17 not less than three months prior to the termination of the probation  
18 period. The secretary of corrections will promulgate rules and  
19 regulations for the conduct of the person during the term of probation.  
20 For defendants found guilty in district court, like functions as the  
21 secretary performs in regard to probation may be performed by probation  
22 officers employed for that purpose by the county legislative authority  
23 of the county wherein the court is located.

24 **Sec. 4.** RCW 9.95.214 and 1995 1st sp.s. c 19 s 32 are each amended  
25 to read as follows:

26 Whenever a defendant convicted of a misdemeanor or gross  
27 misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and  
28 the defendant is supervised by the department of corrections or a  
29 county probation department, the department or county probation  
30 department may assess and collect from the defendant for the duration  
31 of the term of supervision a monthly assessment not to exceed one  
32 hundred dollars per month. This assessment shall be paid to the  
33 ~~((department))~~ agency supervising the defendant and shall be applied,  
34 along with funds appropriated by the legislature, toward the payment or  
35 part payment of the cost of supervising the defendant.

36 **Sec. 5.** RCW 9.92.060 and 1995 1st sp.s. c 19 s 30 are each amended  
37 to read as follows:

1 (1) Whenever any person is convicted of any crime except murder,  
2 burglary in the first degree, arson in the first degree, robbery, rape  
3 of a child, or rape, the superior court may, in its discretion, at the  
4 time of imposing sentence upon such person, direct that such sentence  
5 be stayed and suspended until otherwise ordered by (~~such~~) the  
6 superior court, and that the sentenced person be placed under the  
7 charge of a community corrections officer employed by the department of  
8 corrections, or if the county elects to assume responsibility for the  
9 supervision of all superior court misdemeanor probationers a probation  
10 officer employed or contracted for by the county, upon such terms as  
11 the superior court may determine.

12 (2) As a condition to suspension of sentence, the superior court  
13 shall require the payment of the penalty assessment required by RCW  
14 7.68.035. In addition, the superior court may require the convicted  
15 person to make such monetary payments, on such terms as the superior  
16 court deems appropriate under the circumstances, as are necessary: (a)  
17 To comply with any order of the court for the payment of family  
18 support; (b) to make restitution to any person or persons who may have  
19 suffered loss or damage by reason of the commission of the crime in  
20 question or when the offender pleads guilty to a lesser offense or  
21 fewer offenses and agrees with the prosecutor's recommendation that the  
22 offender be required to pay restitution to a victim of an offense or  
23 offenses which are not prosecuted pursuant to a plea agreement; (c) to  
24 pay any fine imposed and not suspended and the court or other costs  
25 incurred in the prosecution of the case, including reimbursement of the  
26 state for costs of extradition if return to this state by extradition  
27 was required; and (d) to contribute to a county or interlocal drug  
28 fund.

29 (3) As a condition of the suspended sentence, the superior court  
30 may order the probationer to report to the secretary of corrections or  
31 such officer as the secretary may designate and as a condition of the  
32 probation to follow the instructions of the secretary. If the county  
33 legislative authority has elected to assume responsibility for the  
34 supervision of superior court misdemeanor probationers within its  
35 jurisdiction, the superior court misdemeanor probationer shall report  
36 to a probation officer employed or contracted for by the county. In  
37 cases where a superior court misdemeanor probationer is sentenced in  
38 one county, but resides within another county, there must be provisions

1 for the probationer to report to the agency having supervision  
2 responsibility for the probationer's county of residence.

3 (4) If restitution to the victim has been ordered under subsection  
4 (2)(b) of this section and the superior court has ordered supervision,  
5 the officer supervising the probationer shall make a reasonable effort  
6 to ascertain whether restitution has been made as ordered. If the  
7 superior court has ordered supervision and restitution has not been  
8 made, the officer shall inform the prosecutor of that violation of the  
9 terms of the suspended sentence not less than three months prior to the  
10 termination of the suspended sentence.

11 **Sec. 6.** RCW 10.64.120 and 1991 c 247 s 3 are each amended to read  
12 as follows:

13 (1) Every judge of a court of limited jurisdiction shall have the  
14 authority to levy upon a person a monthly assessment not to exceed  
15 ((fifty)) one hundred dollars for services provided whenever ((a)) the  
16 person is referred by the court to the misdemeanor probation  
17 department for evaluation or supervision services. The assessment may  
18 also be made by a ((sentencing)) judge in superior court when such  
19 misdemeanor or gross misdemeanor cases are heard in the superior court.

20 (2) For the purposes of this section the office of the  
21 administrator for the courts shall define a probation department and  
22 adopt rules for the qualifications of probation officers based on  
23 occupational and educational requirements developed by an oversight  
24 committee. This oversight committee shall include a representative  
25 from the district and municipal court judges association, the  
26 misdemeanant corrections association, the office of the administrator  
27 for the courts, and associations of cities and counties. The oversight  
28 committee shall consider qualifications that provide the training and  
29 education necessary to (a) conduct presentencing and postsentencing  
30 background investigations, including sentencing recommendations to the  
31 court regarding jail terms, alternatives to incarceration, and  
32 conditions of release; and (b) provide ongoing supervision and  
33 assessment of offenders' needs and the risk they pose to the community.

34 (3) It shall be the responsibility of the probation services office  
35 to implement local procedures approved by the court of limited  
36 jurisdiction to ensure collection and payment of such fees into the  
37 general fund of the city or county treasury.

1        (~~(3)~~) (4) Revenues raised under this section shall be used to  
2 fund programs for probation services and shall be in addition to those  
3 funds provided in RCW 3.62.050.

4        **Sec. 7.** RCW 36.01.070 and 1967 c 200 s 9 are each amended to read  
5 as follows:

6        Notwithstanding the provisions of chapter 72.01 RCW or any other  
7 provision of law, counties may engage in probation and parole services  
8 and employ personnel therefor under such terms and conditions as any  
9 such county shall so determine. If a county elects to assume  
10 responsibility for the supervision of superior court misdemeanant  
11 offenders placed on probation under RCW 9.92.060 or 9.95.210, the  
12 county may contract with other counties to receive or provide such  
13 probation services. A county may also enter into partnership  
14 agreements with the department of corrections under RCW 72.09.300.

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