

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5256**

Chapter 362, Laws of 2005

59th Legislature  
2005 Regular Session

SENTENCING--PROBATIONER RISK ASSESSMENT

EFFECTIVE DATE: 5/10/05

Passed by the Senate March 9, 2005  
YEAS 47 NAYS 0

BRAD OWEN

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**President of the Senate**

Passed by the House April 19, 2005  
YEAS 97 NAYS 0

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved May 10, 2005.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5256** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

May 10, 2005 - 9:31 a.m.

CHRISTINE GREGOIRE

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**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5256**

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Passed Legislature - 2005 Regular Session

**State of Washington                      59th Legislature                      2005 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Stevens)

READ FIRST TIME 02/15/05.

1            AN ACT Relating to misdemeanors and gross misdemeanors; amending  
2 RCW 9.94A.501, 9.92.060, 9.95.204, and 9.95.210; and declaring an  
3 emergency.

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

5            **Sec. 1.** RCW 9.94A.501 and 2003 c 379 s 3 are each amended to read  
6 as follows:

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

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

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

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

19            (i) The offender's or probationer's current conviction is for:

- 1 (A) A sex offense;
- 2 (B) A violent offense;
- 3 (C) A crime against persons as defined in RCW 9.94A.411;
- 4 (D) A felony that is domestic violence as defined in RCW 10.99.020;
- 5 (E) A violation of RCW 9A.52.025 (residential burglary);
- 6 (F) A violation of, or an attempt, solicitation, or conspiracy to
- 7 violate, RCW 69.50.401 by manufacture or delivery or possession with
- 8 intent to deliver methamphetamine; or
- 9 (G) A violation of, or an attempt, solicitation, or conspiracy to
- 10 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- 11 (ii) The offender or probationer has a prior conviction for:
- 12 (A) A sex offense;
- 13 (B) A violent offense;
- 14 (C) A crime against persons as defined in RCW 9.94A.411;
- 15 (D) A felony that is domestic violence as defined in RCW 10.99.020;
- 16 (E) A violation of RCW 9A.52.025 (residential burglary);
- 17 (F) A violation of, or an attempt, solicitation, or conspiracy to
- 18 violate, RCW 69.50.401 by manufacture or delivery or possession with
- 19 intent to deliver methamphetamine; or
- 20 (G) A violation of, or an attempt, solicitation, or conspiracy to
- 21 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- 22 (iii) The conditions of the offender's community custody, community
- 23 placement, or community supervision or the probationer's supervision
- 24 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, community placement,
- 31 or community supervision or any probationer unless the offender or
- 32 probationer is one for whom supervision is required under subsection
- 33 (2) of this section.
- 34 (4) This section expires July 1, 2010.

35 **Sec. 2.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read

36 as follows:

- 37 (1) Whenever any person is convicted of any crime except murder,

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

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

28 (3) As a condition of the suspended sentence, the superior court  
29 may order the probationer to report to the secretary of corrections or  
30 such officer as the secretary may designate and as a condition of the  
31 probation to follow the instructions of the secretary. If the county  
32 legislative authority has elected to assume responsibility for the  
33 supervision of superior court misdemeanor probationers within its  
34 jurisdiction, the superior court misdemeanor probationer shall report  
35 to a probation officer employed or contracted for by the county. In  
36 cases where a superior court misdemeanor probationer is sentenced in  
37 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 (5) The provisions of RCW 9.94A.501 apply to sentences imposed  
12 under this section.

13 **Sec. 3.** RCW 9.95.204 and 1996 c 298 s 1 are each amended to read  
14 as follows:

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

19 (2) A county legislative authority may assume responsibility for  
20 the supervision of all defendants within its jurisdiction who have been  
21 convicted of a misdemeanor or gross misdemeanor and sentenced to  
22 probation by a superior court. The assumption of responsibility shall  
23 be made by contract with the department of corrections on a biennial  
24 basis.

25 (3) If a county assumes supervision responsibility, the county  
26 shall supervise all superior court misdemeanant probationers within  
27 that county for the duration of the biennium, as set forth in the  
28 contract with the department of corrections.

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

32 (a) The county's agreement to supervise all misdemeanant  
33 probationers who are sentenced by a superior court within that county  
34 and who reside within that county;

35 (b) A reciprocal agreement regarding the supervision of superior  
36 court misdemeanant probationers sentenced in one county but who reside  
37 in another county;

1 (c) The county's agreement to comply with the minimum standards for  
2 classification and supervision of offenders as required under RCW  
3 9.95.206;

4 (d) The amount of funds available from the department of  
5 corrections to the county for supervision of superior court  
6 misdemeanor probationers, calculated according to a formula  
7 established by the department of corrections;

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

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

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

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

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

21 (5) If the contract between the county and the department of  
22 corrections is terminated for any reason, the department of corrections  
23 shall reassume responsibility for supervision of superior court  
24 misdemeanor probationers within that county. In such an event, the  
25 department of corrections retains any and all rights and remedies  
26 available by law and under the contract.

27 (6) The state of Washington, the department of corrections and its  
28 employees, community corrections officers, and volunteers who assist  
29 community corrections officers are not liable for any harm caused by  
30 the actions of a superior court misdemeanor probationer who is under  
31 the supervision of a county. A county, its probation department and  
32 employees, probation officers, and volunteers who assist probation  
33 officers are not liable for any harm caused by the actions of a  
34 superior court misdemeanor probationer who is under the supervision of  
35 the department of corrections. This subsection applies regardless of  
36 whether the supervising entity is in compliance with the standards of  
37 supervision at the time of the misdemeanor probationer's actions.

1 (7) The state of Washington, the department of corrections and its  
2 employees, community corrections officers, any county under contract  
3 with the department of corrections pursuant to this section and its  
4 employees, probation officers, and volunteers who assist community  
5 corrections officers and probation officers in the superior court  
6 misdemeanor probation program are not liable for civil damages  
7 resulting from any act or omission in the rendering of superior court  
8 misdemeanor probation activities unless the act or omission  
9 constitutes gross negligence. For purposes of this section,  
10 "volunteers" is defined according to RCW 51.12.035.

11 (8) The provisions of RCW 9.94A.501 apply to sentences imposed  
12 under this section.

13 **Sec. 4.** RCW 9.95.210 and 1996 c 298 s 3 are each amended to read  
14 as follows:

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

20 (2) In the order granting probation and as a condition thereof, the  
21 superior court may in its discretion imprison the defendant in the  
22 county jail for a period not exceeding one year and may fine the  
23 defendant any sum not exceeding the statutory limit for the offense  
24 committed, and court costs. As a condition of probation, the superior  
25 court shall require the payment of the penalty assessment required by  
26 RCW 7.68.035. The superior court may also require the defendant to  
27 make such monetary payments, on such terms as it deems appropriate  
28 under the circumstances, as are necessary: (a) To comply with any  
29 order of the court for the payment of family support; (b) to make  
30 restitution to any person or persons who may have suffered loss or  
31 damage by reason of the commission of the crime in question or when the  
32 offender pleads guilty to a lesser offense or fewer offenses and agrees  
33 with the prosecutor's recommendation that the offender be required to  
34 pay restitution to a victim of an offense or offenses which are not  
35 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
36 imposed and court costs, including reimbursement of the state for costs  
37 of extradition if return to this state by extradition was required; (d)

1 following consideration of the financial condition of the person  
2 subject to possible electronic monitoring, to pay for the costs of  
3 electronic monitoring if that monitoring was required by the court as  
4 a condition of release from custody or as a condition of probation; (e)  
5 to contribute to a county or interlocal drug fund; and (f) to make  
6 restitution to a public agency for the costs of an emergency response  
7 under RCW 38.52.430, and may require bonds for the faithful observance  
8 of any and all conditions imposed in the probation.

9 (3) The superior court shall order restitution in all cases where  
10 the victim is entitled to benefits under the crime victims'  
11 compensation act, chapter 7.68 RCW. If the superior court does not  
12 order restitution and the victim of the crime has been determined to be  
13 entitled to benefits under the crime victims' compensation act, the  
14 department of labor and industries, as administrator of the crime  
15 victims' compensation program, may petition the superior court within  
16 one year of imposition of the sentence for entry of a restitution  
17 order. Upon receipt of a petition from the department of labor and  
18 industries, the superior court shall hold a restitution hearing and  
19 shall enter a restitution order.

20 (4) In granting probation, the superior court may order the  
21 probationer to report to the secretary of corrections or such officer  
22 as the secretary may designate and as a condition of the probation to  
23 follow the instructions of the secretary. If the county legislative  
24 authority has elected to assume responsibility for the supervision of  
25 superior court misdemeanor probationers within its jurisdiction, the  
26 superior court misdemeanor probationer shall report to a probation  
27 officer employed or contracted for by the county. In cases where a  
28 superior court misdemeanor probationer is sentenced in one county, but  
29 resides within another county, there must be provisions for the  
30 probationer to report to the agency having supervision responsibility  
31 for the probationer's county of residence.

32 (5) If the probationer has been ordered to make restitution and the  
33 superior court has ordered supervision, the officer supervising the  
34 probationer shall make a reasonable effort to ascertain whether  
35 restitution has been made. If the superior court has ordered  
36 supervision and restitution has not been made as ordered, the officer  
37 shall inform the prosecutor of that violation of the terms of probation  
38 not less than three months prior to the termination of the probation

1 period. The secretary of corrections will promulgate rules and  
2 regulations for the conduct of the person during the term of probation.  
3 For defendants found guilty in district court, like functions as the  
4 secretary performs in regard to probation may be performed by probation  
5 officers employed for that purpose by the county legislative authority  
6 of the county wherein the court is located.

7 (6) The provisions of RCW 9.94A.501 apply to sentences imposed  
8 under this section.

9 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 immediately.

Passed by the Senate March 9, 2005.

Passed by the House April 19, 2005.

Approved by the Governor May 10, 2005.

Filed in Office of Secretary of State May 10, 2005.