

HB 1592 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/09/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9.95.011 and 2002 c 174 s 2 are each amended to read  
4 as follows:

5 (1) When the court commits a convicted person to the department of  
6 corrections on or after July 1, 1986, for an offense committed before  
7 July 1, 1984, the court shall, at the time of sentencing or revocation  
8 of probation, fix the minimum term. The term so fixed shall not exceed  
9 the maximum sentence provided by law for the offense of which the  
10 person is convicted.

11 The court shall attempt to set the minimum term reasonably  
12 consistent with the purposes, standards, and sentencing ranges adopted  
13 under RCW 9.94A.850, but the court is subject to the same limitations  
14 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
15 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The  
16 court's minimum term decision is subject to review to the same extent  
17 as a minimum term decision by the parole board before July 1, 1986.

18 Thereafter, the expiration of the minimum term set by the court  
19 minus any time credits earned under RCW 9.95.070 and 9.95.110  
20 constitutes the parole eligibility review date, at which time the board  
21 may consider the convicted person for parole under RCW 9.95.100 and  
22 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
23 board's authority to reduce or increase the minimum term, once set by  
24 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
25 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

26 (2)(a) Except as provided in (b) of this subsection, not less than  
27 ninety days prior to the expiration of the minimum term of a person  
28 sentenced under RCW 9.94A.712, for a sex offense committed on or after  
29 September 1, 2001, less any time credits permitted by statute, the  
30 board shall review the person for conditional release to community

1 custody as provided in RCW 9.95.420. If the board does not release the  
2 person, it shall set a new minimum term not to exceed an additional  
3 ((two)) five years. The board shall review the person again not less  
4 than ninety days prior to the expiration of the new minimum term.

5 (b) If at the time a person sentenced under RCW 9.94A.712 for a sex  
6 offense committed on or after September 1, 2001, arrives at a  
7 department of corrections facility, the offender's minimum term has  
8 expired or will expire within one hundred twenty days of the offender's  
9 arrival, then no later than one hundred twenty days after the  
10 offender's arrival at a department of corrections facility, but after  
11 the board receives the results from the end of sentence review process  
12 and the recommendations for additional or modified conditions of  
13 community custody from the department, the board shall review the  
14 person for conditional release to community custody as provided in RCW  
15 9.95.420. If the board does not release the person, it shall set a new  
16 minimum term not to exceed an additional ((two)) five years. The board  
17 shall review the person again not less than ninety days prior to the  
18 expiration of the new minimum term.

19 (c) In setting a new minimum term, the board may consider the  
20 length of time necessary for the offender to complete treatment and  
21 programming as well as other factors that relate to the offender's  
22 release under RCW 9.95.420. The board's rules shall permit an offender  
23 to petition for an earlier review if circumstances change or the board  
24 receives new information that would warrant an earlier review.

25 **Sec. 2.** RCW 9.95.420 and 2006 c 313 s 2 are each amended to read  
26 as follows:

27 (1)(a) Except as provided in (c) of this subsection, before the  
28 expiration of the minimum term, as part of the end of sentence review  
29 process under RCW 72.09.340, 72.09.345, and where appropriate,  
30 72.09.370, the department shall conduct, and the offender shall  
31 participate in, an examination of the offender, incorporating  
32 methodologies that are recognized by experts in the prediction of  
33 sexual dangerousness, and including a prediction of the probability  
34 that the offender will engage in sex offenses if released.

35 (b) The board may contract for an additional, independent  
36 examination, subject to the standards in this section.

1 (c) If at the time the sentence is imposed by the superior court  
2 the offender's minimum term has expired or will expire within one  
3 hundred twenty days of the sentencing hearing, the department shall  
4 conduct, within ninety days of the offender's arrival at a department  
5 of corrections facility, and the offender shall participate in, an  
6 examination of the offender, incorporating methodologies that are  
7 recognized by experts in the prediction of sexual dangerousness, and  
8 including a prediction of the probability that the offender will engage  
9 in sex offenses if released.

10 (2) The board shall impose the conditions and instructions provided  
11 for in RCW 9.94A.720. The board shall consider the department's  
12 recommendations and may impose conditions in addition to those  
13 recommended by the department. The board may impose or modify  
14 conditions of community custody following notice to the offender.

15 (3)(a) Except as provided in (b) of this subsection, no later than  
16 ninety days before expiration of the minimum term, but after the board  
17 receives the results from the end of sentence review process and the  
18 recommendations for additional or modified conditions of community  
19 custody from the department, the board shall conduct a hearing to  
20 determine whether it is more likely than not that the offender will  
21 engage in sex offenses if released on conditions to be set by the  
22 board. The board may consider an offender's failure to participate in  
23 an evaluation under subsection (1) of this section in determining  
24 whether to release the offender. The board shall order the offender  
25 released, under such affirmative and other conditions as the board  
26 determines appropriate, unless the board determines by a preponderance  
27 of the evidence that, despite such conditions, it is more likely than  
28 not that the offender will commit sex offenses if released. If the  
29 board does not order the offender released, the board shall establish  
30 a new minimum term(~~(, not to exceed an additional two years)~~) as  
31 provided in RCW 9.95.011.

32 (b) If at the time the offender's minimum term has expired or will  
33 expire within one hundred twenty days of the offender's arrival at a  
34 department of correction's facility, then no later than one hundred  
35 twenty days after the offender's arrival at a department of corrections  
36 facility, but after the board receives the results from the end of  
37 sentence review process and the recommendations for additional or  
38 modified conditions of community custody from the department, the board

1 shall conduct a hearing to determine whether it is more likely than not  
2 that the offender will engage in sex offenses if released on conditions  
3 to be set by the board. The board may consider an offender's failure  
4 to participate in an evaluation under subsection (1) of this section in  
5 determining whether to release the offender. The board shall order the  
6 offender released, under such affirmative and other conditions as the  
7 board determines appropriate, unless the board determines by a  
8 preponderance of the evidence that, despite such conditions, it is more  
9 likely than not that the offender will commit sex offenses if released.  
10 If the board does not order the offender released, the board shall  
11 establish a new minimum term(~~(, not to exceed an additional two years))~~)  
12 as provided in RCW 9.95.011.

13 (4) In a hearing conducted under subsection (3) of this section,  
14 the board shall provide opportunities for the victims of any crimes for  
15 which the offender has been convicted to present oral, video, written,  
16 or in-person testimony to the board. The procedures for victim input  
17 shall be developed by rule. To facilitate victim involvement, county  
18 prosecutor's offices shall ensure that any victim impact statements and  
19 known contact information for victims of record are forwarded as part  
20 of the judgment and sentence.

21 **Sec. 3.** RCW 9.95.435 and 2003 c 218 s 1 are each amended to read  
22 as follows:

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

30 (2) Following the hearing specified in subsection (3) of this  
31 section, the board may impose sanctions such as work release, home  
32 detention with electronic monitoring, work crew, community restitution,  
33 inpatient treatment, daily reporting, curfew, educational or counseling  
34 sessions, supervision enhanced through electronic monitoring, or any  
35 other sanctions available in the community, or may suspend the release  
36 and sanction up to sixty days' confinement in a local correctional

1 facility for each violation, or revoke the release to community custody  
2 whenever an offender released by the board under RCW 9.95.420 violates  
3 any condition or requirement of community custody.

4 (3) If an offender released by the board under RCW 9.95.420 is  
5 accused of violating any condition or requirement of community custody,  
6 he or she is entitled to a hearing before the board or a designee of  
7 the board prior to the imposition of sanctions. The hearing shall be  
8 considered as offender disciplinary proceedings and shall not be  
9 subject to chapter 34.05 RCW. The board shall develop hearing  
10 procedures and a structure of graduated sanctions consistent with the  
11 hearing procedures and graduated sanctions developed pursuant to RCW  
12 9.94A.737. The board may suspend the offender's release to community  
13 custody and confine the offender in a correctional institution owned,  
14 operated by, or operated under contract with the state prior to the  
15 hearing unless the offender has been arrested and confined for a new  
16 criminal offense.

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

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

22 (b) The board shall provide the offender with (~~written notice of~~  
23 ~~the violation,~~) findings and conclusions which include the evidence  
24 relied upon, and the reasons the particular sanction was imposed.  
25 (~~The notice shall include a statement of the rights specified in this~~  
26 ~~subsection, and the offender's~~) The board shall notify the offender of  
27 the right to appeal the sanction and the right to file a personal  
28 restraint petition under court rules after the final decision of the  
29 board;

30 (c) The hearing shall be held unless waived by the offender, and  
31 shall be electronically recorded. For offenders not in total  
32 confinement, the hearing shall be held within thirty days of service of  
33 notice of the violation, but not less than twenty-four hours after  
34 notice of the violation. For offenders in total confinement, the  
35 hearing shall be held within thirty days of service of notice of the  
36 violation, but not less than twenty-four hours after notice of the  
37 violation. The board or its designee shall make a determination

1 whether probable cause exists to believe the violation or violations  
2 occurred. The determination shall be made within forty-eight hours of  
3 receipt of the allegation;

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

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

18 (5) Within seven days after the (~~hearing examiner's~~) presiding  
19 hearing officer's decision, the offender may appeal the decision to the  
20 full board or to a panel of three reviewing examiners designated by the  
21 chair of the board or by the chair's designee. The sanction shall be  
22 reversed or modified if a majority of the panel finds that the sanction  
23 was not reasonably related to any of the following: (a) The crime of  
24 conviction; (b) the violation committed; (c) the offender's risk of  
25 reoffending; or (d) the safety of the community.

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

28 **Sec. 4.** RCW 9.96.050 and 2002 c 16 s 3 are each amended to read as  
29 follows:

30 (1)(a) When (~~a prisoner~~) an offender on parole has performed all  
31 obligations of his or her release, including any and all legal  
32 financial obligations, for such time as shall satisfy the indeterminate  
33 sentence review board that his or her final release is not incompatible  
34 with the best interests of society and the welfare of the paroled  
35 individual, the board may make a final order of discharge and issue a  
36 certificate of discharge to the (~~prisoner~~) offender. (~~The~~

1 ~~certificate of discharge shall be issued to the offender in person or~~  
2 ~~by mail to the prisoner's last known address.))~~

3 (b) The board retains the jurisdiction to issue a certificate of  
4 discharge after the expiration of the offender's or parolee's maximum  
5 statutory sentence. If not earlier granted and any and all legal  
6 financial obligations have been paid, the board shall issue a final  
7 order of discharge three years from the date of parole unless the  
8 parolee is on suspended or revoked status at the expiration of the  
9 three years.

10 (c) The discharge, regardless of when issued, shall have the effect  
11 of restoring all civil rights lost by operation of law upon conviction,  
12 and the certification of discharge shall so state.

13 (d) This restoration of civil rights shall not restore the right to  
14 receive, possess, own, or transport firearms.

15 (e) The board shall issue a certificate of discharge to the  
16 offender in person or by mail to the offender's last known address.

17 (2) The board shall send a copy of every signed certificate of  
18 discharge to the auditor for the county in which the offender was  
19 sentenced and to the department of corrections. The department shall  
20 create and maintain a data base containing the names of all felons who  
21 have been issued certificates of discharge, the date of discharge, and  
22 the date of conviction and offense.

23 ~~((The board retains the jurisdiction to issue a certificate of~~  
24 ~~discharge after the expiration of the prisoner's or parolee's maximum~~  
25 ~~statutory sentence. If not earlier granted, the board shall make a~~  
26 ~~final order of discharge three years from the date of parole unless the~~  
27 ~~parolee is on suspended or revoked status at the expiration of the~~  
28 ~~three years. Such discharge, regardless of when issued, shall have the~~  
29 ~~effect of restoring all civil rights lost by operation of law upon~~  
30 ~~conviction, and the certification of discharge shall so state. This~~  
31 ~~restoration of civil rights shall not restore the right to receive,~~  
32 ~~possess, own, or transport firearms.))~~

33 (3) The discharge provided for in this section shall be considered  
34 as a part of the sentence of the convicted person and shall not in any  
35 manner be construed as affecting the powers of the governor to pardon  
36 any such person."

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1        On page 1, line 1 of the title, after "offenders;" strike the  
2 remainder of the title and insert "and amending RCW 9.95.011, 9.95.420,  
3 9.95.435, and 9.96.050."

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