
SENATE BILL 5053

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline, Hargrove, Nelson, and Chase

Read first time 01/12/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.570,
2 9.95.425, 9.95.430, 9.95.435, and 9.95.440; adding a new section to
3 chapter 9.94A RCW; adding new sections to chapter 9.95 RCW; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read
7 as follows:

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

1 officers, except: ~~((+1))~~ (a) In the case of an offender in need of
2 emergency medical treatment; or ~~((+2))~~ (b) for the purpose of
3 commitment to an inpatient treatment facility in the case of an
4 offender convicted of the crime of rape in the first degree.

5 (2)(a) Notwithstanding the statutory maximum sentence or any other
6 provision of this chapter, a persistent offender shall be sentenced
7 under this subsection if none of the offender's convictions used as a
8 basis for the finding that the offender was a persistent offender is a
9 class A felony or sex offense, or a federal or out-of-state conviction
10 for an offense that under the laws of this state would be considered a
11 class A felony or sex offense, or a deadly weapon verdict under RCW
12 9.94A.825 or 9.95.015.

13 (b) Upon a finding that the offender is subject to sentencing under
14 this subsection, the court shall impose a sentence with a maximum term
15 of life and a mandatory minimum term of fifteen years.

16 (c) When a court sentences a person to the custody of the
17 department under this subsection, the court shall, in addition to the
18 other terms of the sentence, sentence the offender to community custody
19 under the supervision of the department and the authority of the board
20 for any period of time the person is released from total confinement
21 before the expiration of the maximum sentence.

22 (d)(i) As part of any sentence under this subsection, the court
23 shall also require the offender to comply with any conditions imposed
24 by the board under section 4 of this act.

25 (ii) An offender released by the board under section 4 of this act
26 is subject to the supervision of the department for twenty-four months.
27 The department shall monitor the offender's compliance with conditions
28 of community custody imposed by the court, department, or board, and
29 promptly report any violations to the board. Any violation of
30 conditions of community custody established or modified by the board
31 are subject to the provisions of section 4 of this act.

32 NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW
33 to read as follows:

34 In any criminal case wherein an offender has been sentenced as a
35 persistent offender prior to the effective date of this section, the
36 offender shall have a resentencing hearing if none of the convictions
37 used as a basis for the finding that the offender was a persistent

1 offender were a class A felony or sex offense, or a federal or out-of-
2 state conviction for an offense that under the laws of this state would
3 be considered a class A felony or sex offense, or a deadly weapon
4 verdict under RCW 9.94A.825 or 9.95.015. The prosecuting attorney for
5 the county in which any offender was sentenced as a persistent offender
6 shall review each sentencing document. If no current or past
7 conviction for a class A felony or sex offense, or a federal or out-of-
8 state conviction for an offense that under the laws of this state would
9 be considered a class A felony or sex offense, or a deadly weapon
10 verdict under RCW 9.94A.825 or 9.95.015 was used as a basis for a
11 finding that an offender was a persistent offender, the prosecuting
12 attorney shall, or the offender may, make a motion for relief from
13 sentence to the original sentencing court.

14 The sentencing court shall grant the motion if it finds that no
15 current or past conviction for a class A felony or sex offense, or a
16 federal or out-of-state conviction for an offense that under the laws
17 of this state would be considered a class A felony or sex offense, or
18 a deadly weapon verdict under RCW 9.94A.825 or 9.95.015 was used as a
19 basis for a finding that the offender was a persistent offender and
20 shall immediately set an expedited date for resentencing. At
21 resentencing, the court shall sentence the offender as specified in RCW
22 9.94A.570(2).

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.95 RCW
24 to read as follows:

25 (1) Except as provided in subsection (2) of this section, not less
26 than ninety days prior to the expiration of the minimum term of a
27 person sentenced under RCW 9.94A.570(2), the board shall review the
28 person for conditional release to community custody as provided in
29 section 4 of this act. If the board does not release the person, it
30 shall set a new minimum term not to exceed an additional five years.
31 The board shall review the person again not less than ninety days prior
32 to the expiration of the new minimum term.

33 (2) If at the time a person sentenced under RCW 9.94A.570(2)
34 arrives at a department of corrections facility, the offender's minimum
35 term has expired or will expire within one hundred twenty days of the
36 offender's arrival, then no later than one hundred twenty days after
37 the offender's arrival at a department of corrections facility, the

1 board shall review the person for conditional release to community
2 custody as provided in section 4 of this act. If the board does not
3 release the person, it shall set a new minimum term not to exceed an
4 additional five years. The board shall review the person again not
5 less than ninety days prior to the expiration of the new minimum term.

6 (3) In setting a new minimum term, the board may consider the
7 length of time necessary for the offender to complete treatment and
8 programming as well as other factors that relate to the offender's
9 release under section 4 of this act. The board's rules shall permit an
10 offender to petition for an earlier review if circumstances change or
11 the board receives new information that would warrant an earlier
12 review.

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

15 (1)(a) Except as provided in (b) of this subsection, before the
16 expiration of the minimum term, the department shall conduct, and the
17 offender shall participate in, an examination of the offender.

18 (b) If at the time the sentence is imposed by the superior court
19 the offender's minimum term has expired or will expire within one
20 hundred twenty days of the sentencing hearing, the department shall
21 conduct, within ninety days of the offender's arrival at a department
22 of corrections facility, and the offender shall participate in, an
23 examination of the offender.

24 (2) The board shall impose the conditions and instructions provided
25 for in RCW 9.94A.704. The board shall consider the department's
26 recommendations and may impose conditions in addition to those
27 recommended by the department. The board may impose or modify
28 conditions of community custody following notice to the offender.

29 **Sec. 5.** RCW 9.95.425 and 2009 c 28 s 30 are each amended to read
30 as follows:

31 (1) Whenever the board or a community corrections officer of this
32 state has reason to believe an offender released under RCW 9.95.420 or
33 section 4 of this act has violated a condition of community custody or
34 the laws of this state, any community corrections officer may arrest or
35 cause the arrest and detention of the offender pending a determination
36 by the board whether sanctions should be imposed or the offender's

1 community custody should be revoked. The community corrections officer
2 shall report all facts and circumstances surrounding the alleged
3 violation to the board, with recommendations.

4 (2) If the board or the department causes the arrest or detention
5 of an offender for a violation that does not amount to a new crime and
6 the offender is arrested or detained by local law enforcement or in a
7 local jail, the board or department, whichever caused the arrest or
8 detention, shall be financially responsible for local costs. Jail bed
9 costs shall be allocated at the rate established under RCW 9.94A.740.

10 **Sec. 6.** RCW 9.95.430 and 2001 2nd sp.s. c 12 s 308 are each
11 amended to read as follows:

12 Any offender released under RCW 9.95.420 or section 4 of this act
13 who is arrested and detained in physical custody by the authority of a
14 community corrections officer, or upon the written order of the board,
15 shall not be released from custody on bail or personal recognizance,
16 except upon approval of the board and the issuance by the board of an
17 order reinstating the offender's release on the same or modified
18 conditions. All chiefs of police, marshals of cities and towns,
19 sheriffs of counties, and all police, prison, and peace officers and
20 constables shall execute any such order in the same manner as any
21 ordinary criminal process.

22 **Sec. 7.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read
23 as follows:

24 (1) If an offender released by the board under RCW 9.95.420 or
25 section 4 of this act violates any condition or requirement of
26 community custody, the board may transfer the offender to a more
27 restrictive confinement status to serve up to the remaining portion of
28 the sentence, less credit for any period actually spent in community
29 custody or in detention awaiting disposition of an alleged violation
30 and subject to the limitations of subsection (2) of this section.

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

1 and sanction up to sixty days' confinement in a local correctional
2 facility for each violation, or revoke the release to community custody
3 whenever an offender released by the board under RCW 9.95.420 or
4 section 4 of this act violates any condition or requirement of
5 community custody.

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

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

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

24 (b) The board shall provide the offender with findings and
25 conclusions which include the evidence relied upon, and the reasons the
26 particular sanction was imposed. The board shall notify the offender
27 of 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 presiding hearing officer if
7 the offender has a language or communications barrier; (iii) testify or
8 remain silent; (iv) call witnesses and present documentary evidence;
9 (v) question witnesses who appear and testify; and (vi) be represented
10 by counsel if revocation of the release to community custody upon a
11 finding of violation is a probable sanction for the violation. The
12 board may not revoke the release to community custody of any offender
13 who was not represented by counsel at the hearing, unless the offender
14 has waived the right to counsel; and

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

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

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

27 **Sec. 8.** RCW 9.95.440 and 2008 c 231 s 45 are each amended to read
28 as follows:

29 In the event the board suspends the release status of an offender
30 released under RCW 9.95.420 or section 4 of this act by reason of an
31 alleged violation of a condition of release, or pending disposition of
32 a new criminal charge, the board may nullify the suspension order and
33 reinstate release under previous conditions or any new conditions the
34 board determines advisable under RCW 9.94A.704. Before the board may
35 nullify a suspension order and reinstate release, it shall determine

1 that the best interests of society and the offender shall be served by
2 such reinstatement rather than return to confinement.

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