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HOUSE BILL 1789

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2017 Regular Session

By Representatives Jenkins, Pettigrew, Frame, Stambaugh, Ortiz-Self, Fitzgibbon, Macri, Ormsby, and Gregerson

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1 AN ACT Relating to rehabilitated offenders; amending RCW  
2 9.95.425, 9.95.430, 9.95.435, 9.95.440, 9.94A.533, and 9.94A.6332;  
3 adding a new section to chapter 9.94A RCW; adding a new chapter to  
4 Title 9 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** (1) Since the 1980s, the legislature has  
7 passed numerous laws increasing terms of confinement for almost all  
8 offenders, including: The elimination of parole; increasing statutory  
9 sentence ranges; establishing mandatory minimums; and establishing  
10 persistent offender laws. Exceptionally long sentences have proved to  
11 be especially ineffective at reducing recidivism or improving public  
12 safety. Sadly, many persons sentenced to extremely long sentences  
13 were young, under the age of thirty, when they were convicted and  
14 sentenced. Based on all we now know, and continue to learn, about  
15 brain development in youth and their corresponding abilities to make  
16 rational decisions and to process and manage emotions and impulses,  
17 it is no surprise to learn that many persons serving long sentences  
18 are rehabilitated or are able to become rehabilitated; and, further,  
19 that among them are those who have made amends with the victims and  
20 their families of the crimes they committed many years ago.

1 (2) While incarceration is a necessary tool to hold individuals  
2 accountable for their actions and to enhance public safety, creating  
3 the possibility of early release for prisoners encourages  
4 rehabilitation and reduces incarceration rates and costs. The  
5 legislature intends to provide an opportunity to reclaim the futures  
6 of those persons serving long sentences who can demonstrate that they  
7 have been rehabilitated, by creating a community review board to  
8 engage in an ongoing, robust, and fair review of prisoners serving  
9 sentences longer than twenty years. In conducting its review, the  
10 community review board will take into account the offense, crime  
11 victims, the offender's rehabilitative efforts and changes, and the  
12 benefits and risks to the community upon release. Recommendations for  
13 early release by the community review board will be submitted to the  
14 governor for his or her final determination. The community review  
15 board will be composed of a diverse array of experts in order to  
16 fully represent the spectrum of views and priorities in the  
17 community.

18 (3) In support of the community review board's work, and in  
19 recognition of the legislature's responsibility to establish a fair  
20 and just criminal sentencing system, the legislature further intends  
21 that an independent review of our criminal sentencing system will be  
22 conducted, and intends that this review will result in  
23 recommendations regarding changing and improving sentencing laws and  
24 practices to address implementation challenges, promote public  
25 safety, reduce recidivism, reduce disparity, reduce incarceration  
26 rates for low-risk offenders, reduce costs to taxpayers, and promote  
27 fairness and equity.

28 NEW SECTION. **Sec. 2.** The definitions in this section apply  
29 throughout this chapter unless the context clearly requires  
30 otherwise.

31 (1) "Board" means the community review board.

32 (2) "Community custody" means that portion of an offender's  
33 sentence subject to controls including crime-related prohibitions and  
34 affirmative conditions from the court, the board, or the department  
35 based on risk to community safety, that is served under supervision  
36 in the community, and which may be modified or revoked for violations  
37 of release conditions.

38 (3) "Department" means the department of corrections.

1        NEW SECTION.    **Sec. 3.**    The community review board is created  
2 within the office of the governor for the purpose of reviewing  
3 incarcerated offenders for possible early release after twenty years  
4 of confinement.

5        NEW SECTION.    **Sec. 4.**    The board is empowered to:

6            (1) Meet at such times and places as necessary under section 7 of  
7 this act;

8            (2) Determine early release dates for offenders in accordance  
9 with section 9 of this act;

10           (3) Impose community custody and release conditions for offenders  
11 in accordance with section 9 of this act and RCW 9.95.425 through  
12 9.95.440;

13           (4) Adopt policies and procedures to facilitate the orderly  
14 administration of the board's hearings and business;

15           (5) Transact business in panels as necessary under section 7 of  
16 this act;

17           (6) Conduct all business mandated by law;

18           (7) Review and study research literature and issues related to  
19 incarceration, reentry, and reintegration of offenders for the  
20 purpose of improving the board's decision-making process; and

21           (8) Carry out any other specified duties and responsibilities.

22        NEW SECTION.    **Sec. 5.**    (1) The board consists of eleven members  
23 appointed by the governor. The governor must create a membership that  
24 includes a:

25           (a) Representative of a statewide or local organization  
26 representing communities of color or racial equity;

27           (b) Representative of a statewide organization representing crime  
28 victims;

29           (c) Representative of an association, community organization, or  
30 advocacy group with experience or interest in the formerly  
31 incarcerated and successful community reentry;

32           (d) Representative of a faith-based organization with interest in  
33 successful community reentry;

34           (e) Representative of a statewide organization representing  
35 criminal defense lawyers;

36           (f) Law enforcement professional;

37           (g) Representative of the department;

1 (h) Representative of a statewide organization representing  
2 prosecuting attorneys;

3 (i) Person with experience and interest in tribal affairs;

4 (j) Behavioral health professional; and

5 (k) Community member.

6 (2) The governor shall appoint one member as the chair of the  
7 board.

8 (3)(a) The governor shall make initial appointments to the board  
9 no later than ninety days after the effective date of this section.  
10 Initial appointments are for staggered terms from the date of  
11 appointment according to the following: Three members have three-year  
12 terms; three members have four-year terms; three members have five-  
13 year terms; and two members have six-year terms. The governor shall  
14 designate the appointees who will serve the staggered terms.

15 (b) Except for initial appointments under (a) of this subsection,  
16 each member shall hold office for a term of five years, and until his  
17 or her successor is appointed and qualified. The terms expire on  
18 April 15th of the expiration year. Any member may be reappointed for  
19 additional terms. Any member of the council may be removed by the  
20 governor for misfeasance, malfeasance, or willful neglect of duty  
21 after notice and a public hearing, unless the notice and hearing is  
22 expressly waived in writing by the affected member. In the event of a  
23 vacancy due to death, resignation, or removal, or upon the expiration  
24 of a term, the governor shall appoint a successor for the remainder  
25 of the unexpired term. Vacancies must be filled by the governor  
26 within ninety days.

27 (4) The office of the governor shall provide administrative and  
28 staff support for the board. The board may employ a senior  
29 administrative officer and other personnel as may be necessary to  
30 assist the board in carrying out its duties.

31 (5) The members of the board and staff assigned to the board  
32 shall not engage in any other business or profession or hold any  
33 other public office without the prior approval of the executive  
34 ethics board indicating compliance with RCW 42.52.020, 42.52.030,  
35 42.52.040, and 42.52.120; nor shall they, at the time of appointment  
36 or employment or during their incumbency, serve as the representative  
37 of any political party on an executive committee or other governing  
38 body thereof, or as an executive officer or employee of any political  
39 committee or association. The members of the board shall each  
40 severally receive salaries fixed by the governor in accordance with

1 the provisions of RCW 43.03.040, and in addition shall receive travel  
2 expenses incurred in the discharge of their official duties in  
3 accordance with RCW 43.03.050 and 43.03.060.

4 NEW SECTION. **Sec. 6.** (1) The board shall meet at major state  
5 correctional institutions at such times as may be necessary for a  
6 full and complete study of: The applications for early release under  
7 section 9 of this act; supervision of offenders in community custody  
8 under the board's authority under section 9 of this act. Other times  
9 and places of meetings may also be fixed by the board. The board must  
10 meet at least four times during each calendar year.

11 (2) The superintendents of the different institutions shall  
12 provide suitable quarters for the board while in the discharge of  
13 their duties.

14 NEW SECTION. **Sec. 7.** The board may meet and transact business  
15 in panels. Each board panel must consist of at least five members of  
16 the board. In all matters concerning the internal affairs of the  
17 board and policy-making decisions, a majority of the full board must  
18 concur in the matters. The chair of the board with the consent of a  
19 majority of the board may designate any five members to exercise all  
20 the powers and duties of the board in connection with any hearing  
21 before the board. If the five members so designated cannot  
22 unanimously agree as to the disposition of the hearing assigned to  
23 them, the hearing must be reheard by the full board. All actions of  
24 the full board must be by concurrence of a majority of the sitting  
25 board members.

26 NEW SECTION. **Sec. 8.** (1) Upon receipt of a petition for early  
27 release submitted under section 9 of this act, the board shall  
28 provide notice and a copy of the petition to the sentencing court,  
29 prosecuting attorney, and crime victim or surviving family member.  
30 The board may request the prosecuting attorney to assist in  
31 contacting the crime victim or surviving family member. Notice of the  
32 early release hearing date must be provided at least ninety days  
33 before the early release hearing. If requested in writing by the  
34 sentencing court, the prosecuting attorney, or the crime victim or  
35 surviving family member, the board shall also provide any assessment,  
36 psychological evaluation, institutional behavior record, or other  
37 examination of the offender.

1 (2) For the purpose of review by the board of a petition for  
2 early release, it is presumed that none of the records reviewed are  
3 exempt from disclosure to the sentencing court, prosecuting attorney,  
4 and crime victim or surviving family member, in whole or in part. The  
5 board may not claim any exemption from disclosure for the records  
6 reviewed for an early release petition.

7 (3) The board and its subcommittees must provide comprehensive  
8 minutes of all related meetings and hearings on a petition for early  
9 release. The comprehensive minutes must include, but are not limited  
10 to, the board members present, the name of the petitioner seeking  
11 review, the purpose and date of the meeting or hearing, a listing of  
12 documents reviewed, the names of those who testified, a summary of  
13 the discussion, the motions or other actions taken, and the votes of  
14 board members by name. For the purposes of this subsection, "action"  
15 has the same meaning as in RCW 42.30.020. The comprehensive minutes  
16 must be publicly and conspicuously posted on the board's web site  
17 within thirty days of the meeting or hearing.

18 (4) Nothing in this section precludes the board from receiving  
19 confidential input from the crime victim or surviving family member.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A  
21 RCW to read as follows:

22 (1) Notwithstanding any other provision of this chapter, any  
23 offender convicted of and incarcerated for one or more crimes may  
24 petition the community review board for early release after serving  
25 no less than twenty years of total confinement, provided the offender  
26 has not committed a major violation in the twelve months prior to  
27 filing the petition for early release, and the current sentence was  
28 not imposed for:

29 (a) An offense committed before July 1, 1984, where the offender  
30 is eligible for review by the indeterminate sentence review board;

31 (b) An offense where the offender is eligible for review by the  
32 indeterminate sentence review board under RCW 9.94A.730;

33 (c) Aggravated first degree murder under RCW 10.95.030; or

34 (d) A sex offense, including the offenses imposed under RCW  
35 9.94A.507 or any offense defined as a sex offense in RCW 9.94A.030.

36 (2) When an offender who will be eligible to petition under this  
37 section has served fifteen years, the department shall conduct an  
38 assessment of the offender and identify programming and services that  
39 would be appropriate to prepare the offender for return to the

1 community. To the extent possible, the department shall make  
2 programming available as identified by the assessment.

3 (3) No later than one hundred eighty days from receipt of the  
4 petition for early release, the department shall conduct, and the  
5 offender shall participate in, an examination of the offender,  
6 incorporating methodologies that are recognized by experts in the  
7 prediction of dangerousness, and including a prediction of the  
8 probability that the offender will engage in future criminal behavior  
9 if released on conditions to be set by the community review board.  
10 The community review board may consider an offender's failure to  
11 participate in an evaluation under this subsection in determining  
12 whether to release him or her.

13 (4) The community review board shall review a petition and  
14 conduct a hearing on a petition within twelve months of the filing of  
15 the petition, except the governor may extend the deadline in  
16 circumstances where the community review board is processing a high  
17 number of petitions. After a hearing, the community review board may  
18 order the offender released under such affirmative and other  
19 conditions as the community review board determines appropriate. When  
20 the community review board grants or denies a petition, it shall  
21 specify the reasons for the decision. The community review board  
22 shall give public safety considerations the highest priority when  
23 making all discretionary decisions regarding the ability for release  
24 and conditions of release. The community review board shall consider  
25 the following additional factors when evaluating an offender for  
26 possible early release under this section:

27 (a) The offense;

28 (b) The offender's sentence;

29 (c) Any relevant findings of the sentencing court;

30 (d) The offender's time served in total confinement;

31 (e) The offender's criminal history;

32 (f) The offender's risk assessment scores;

33 (g) The offender's behavior before and during incarceration  
34 including, but not limited to, infraction history, educational  
35 history, and work history;

36 (h) The offender's responsivity to programming;

37 (i) The offender's acceptance of responsibility, remorse, and  
38 atonement;

39 (j) The offender's personal development and life changes since  
40 the offense occurred;

1 (k) The offender's social and medical history;

2 (l) Input from the victims;

3 (m) Input from the prosecutors, defense attorneys, and judges  
4 involved in the offender's sentence;

5 (n) Input from the community including, but not limited to, those  
6 who pledge support of the offender, if released;

7 (o) The resources in the community to facilitate successful  
8 reentry, if released; and

9 (p) Any other relevant factors.

10 (5) In a hearing conducted under subsection (4) of this section,  
11 the community review board shall provide opportunities for victims  
12 and survivors of victims of any crimes for which the offender has  
13 been convicted to present statements as set forth in RCW 7.69.032.  
14 The procedures for victim and survivor of victim input shall be  
15 developed by rule. To facilitate victim and survivor of victim  
16 involvement, county prosecutor's offices shall ensure that any victim  
17 impact statements and known contact information for victims of record  
18 and survivors of victims are forwarded as part of the judgment and  
19 sentence. To facilitate compliance with this section, the community  
20 review board shall publish and regularly update a list of current  
21 petitions being considered by the community review board.

22 (6)(a) The governor shall review each decision of the community  
23 review board to approve or deny a petition for release under this  
24 section. The governor shall consider the factors under subsection (4)  
25 of this section. The governor shall issue a decision approving or  
26 reversing the community review board's decision within sixty days.

27 (b) If the governor does not issue a decision within sixty days,  
28 the community review board's decision on the petition is deemed  
29 approved.

30 (c) If the governor approves a decision denying release or  
31 reverses a decision approving release, the offender is eligible to  
32 reapply in accordance with subsection (8) of this section. If the  
33 governor reverses a decision denying release, the governor shall  
34 establish conditions for release as required by this section.

35 (d) If the governor approves a decision for release, or a  
36 decision is deemed approved in accordance with (b) of this  
37 subsection, the decision of the community review board must be filed  
38 with the superior court in the county where the last offense took  
39 place and a certified copy shall be provided to the department.



1 (7) When the community review board orders the release of an  
2 offender under this section and it is approved under subsection  
3 (6)(d) of this section, or when the governor reverses a decision  
4 denying release and established conditions for release and community  
5 custody, the community review board shall order and the department  
6 shall enforce community custody under the supervision of the  
7 department for any period of time the person is released from total  
8 confinement before the expiration of the original sentence, including  
9 total and partial confinement, imposed by the court. The department  
10 shall monitor the offender's compliance with conditions of community  
11 custody imposed by the court, department, or community review board,  
12 and promptly report any violations to the community review board. Any  
13 violation of conditions of community custody established or modified  
14 by the community review board are subject to the provisions of RCW  
15 9.95.425 through 9.95.440.

16 (8) An offender whose petition for release is denied may file a  
17 new petition for release five years from the date of denial or at an  
18 earlier date as may be set by the community review board.

19 (9) An offender does not have a right to appointed counsel for  
20 proceedings under this section.

21 **Sec. 10.** RCW 9.95.425 and 2014 c 130 s 5 are each amended to  
22 read as follows:

23 (1) Whenever the board, the community review board, or a  
24 community corrections officer of this state has reason to believe an  
25 offender released under RCW 9.95.420, 10.95.030(3), ~~((~~or~~))~~ 9.94A.730,  
26 or section 9 of this act has violated a condition of community  
27 custody or the laws of this state, any community corrections officer  
28 may arrest or cause the arrest and detention of the offender pending  
29 a determination by the board or the community review board whether  
30 sanctions should be imposed or the offender's community custody  
31 should be revoked. The community corrections officer shall report all  
32 facts and circumstances surrounding the alleged violation to the  
33 board or the community review board, with recommendations.

34 (2) If the board, the community review board, or the department  
35 causes the arrest or detention of an offender for a violation that  
36 does not amount to a new crime and the offender is arrested or  
37 detained by local law enforcement or in a local jail, the board, the  
38 community review board, or department, whichever caused the arrest or

1 detention, shall be financially responsible for local costs. Jail bed  
2 costs shall be allocated at the rate established under RCW 9.94A.740.

3 **Sec. 11.** RCW 9.95.430 and 2014 c 130 s 6 are each amended to  
4 read as follows:

5 Any offender released under RCW 9.95.420, 10.95.030(3), (~~or~~)  
6 9.94A.730, or section 9 of this act who is arrested and detained in  
7 physical custody by the authority of a community corrections officer,  
8 or upon the written order of the board or community review board,  
9 shall not be released from custody on bail or personal recognizance,  
10 except upon approval of the board or community review board and the  
11 issuance by the board or community review board of an order  
12 reinstating the offender's release on the same or modified  
13 conditions. All chiefs of police, marshals of cities and towns,  
14 sheriffs of counties, and all police, prison, and peace officers and  
15 constables shall execute any such order in the same manner as any  
16 ordinary criminal process.

17 **Sec. 12.** RCW 9.95.435 and 2014 c 130 s 7 are each amended to  
18 read as follows:

19 (1) If an offender released by the board under RCW 9.95.420,  
20 10.95.030(3), or 9.94A.730, or by the community review board under  
21 section 9 of this act violates any condition or requirement of  
22 community custody, the board or community review board may transfer  
23 the offender to a more restrictive confinement status to serve up to  
24 the remaining portion of the sentence, less credit for any period  
25 actually spent in community custody or in detention awaiting  
26 disposition of an alleged violation and subject to the limitations of  
27 subsection (2) of this section.

28 (2) Following the hearing specified in subsection (3) of this  
29 section, the board or community review board may impose sanctions  
30 such as work release, home detention with electronic monitoring, work  
31 crew, community restitution, inpatient treatment, daily reporting,  
32 curfew, educational or counseling sessions, supervision enhanced  
33 through electronic monitoring, or any other sanctions available in  
34 the community, or may suspend the release and sanction up to sixty  
35 days' confinement in a local correctional facility for each  
36 violation, or revoke the release to community custody whenever an  
37 offender released by the board under RCW 9.95.420, 10.95.030(3), or

1 9.94A.730, or by the community review board under section 9 of this  
2 act violates any condition or requirement of community custody.

3 (3) If an offender released by the board under RCW 9.95.420,  
4 10.95.030(3), or 9.94A.730, or by the community review board under  
5 section 9 of this act is accused of violating any condition or  
6 requirement of community custody, he or she is entitled to a hearing  
7 before the respective board or a designee of the board prior to the  
8 imposition of sanctions. The hearing shall be considered as offender  
9 disciplinary proceedings and shall not be subject to chapter 34.05  
10 RCW. The board and the community review board shall develop hearing  
11 procedures and a structure of graduated sanctions consistent with the  
12 hearing procedures and graduated sanctions developed pursuant to RCW  
13 9.94A.737. The board or community review board may suspend the  
14 offender's release to community custody and confine the offender in a  
15 correctional institution owned, operated by, or operated under  
16 contract with the state prior to the hearing unless the offender has  
17 been arrested and confined for a new criminal offense.

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

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

24 (b) The board or the community review board shall provide the  
25 offender with findings and conclusions which include the evidence  
26 relied upon, and the reasons the particular sanction was imposed. The  
27 board or the community review board shall notify the offender of the  
28 right to appeal the sanction and the right to file a personal  
29 restraint petition under court rules after the final decision of the  
30 board;

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

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

3 (d) The offender shall have the right to: (i) Be present at the  
4 hearing; (ii) have the assistance of a person qualified to assist the  
5 offender in the hearing, appointed by the presiding hearing officer  
6 if the offender has a language or communications barrier; (iii)  
7 testify or remain silent; (iv) call witnesses and present documentary  
8 evidence; (v) question witnesses who appear and testify; and (vi) be  
9 represented by counsel if revocation of the release to community  
10 custody upon a finding of violation is a probable sanction for the  
11 violation. The board or community review board may not revoke the  
12 release to community custody of any offender who was not represented  
13 by counsel at the hearing, unless the offender has waived the right  
14 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  
19 community review board or to a panel of three reviewing examiners  
20 designated by the chair of the board or by the chair's designee or  
21 community review board. The sanction shall be reversed or modified if  
22 a majority of the panel finds that the sanction was not reasonably  
23 related to any of the following: (a) The crime of conviction; (b) the  
24 violation committed; (c) the offender's risk of reoffending; or (d)  
25 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. 13.** RCW 9.95.440 and 2014 c 130 s 8 are each amended to  
29 read as follows:

30 In the event the board or community review board suspends the  
31 release status of an offender released under RCW 9.95.420,  
32 10.95.030(3), (~~(e)~~) 9.94A.730, or section 9 of this act by reason of  
33 an alleged violation of a condition of release, or pending  
34 disposition of a new criminal charge, the board or community review  
35 board may nullify the suspension order and reinstate release under  
36 previous conditions or any new conditions the board or community  
37 review board determines advisable under RCW 9.94A.704. Before the  
38 board may nullify a suspension order and reinstate release, it shall

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

3 **Sec. 14.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to  
4 read as follows:

5 (1) The provisions of this section apply to the standard sentence  
6 ranges determined by RCW 9.94A.510 or 9.94A.517.

7 (2) For persons convicted of the anticipatory offenses of  
8 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
9 RCW, the standard sentence range is determined by locating the  
10 sentencing grid sentence range defined by the appropriate offender  
11 score and the seriousness level of the completed crime, and  
12 multiplying the range by seventy-five percent.

13 (3) The following additional times shall be added to the standard  
14 sentence range for felony crimes committed after July 23, 1995, if  
15 the offender or an accomplice was armed with a firearm as defined in  
16 RCW 9.41.010 and the offender is being sentenced for one of the  
17 crimes listed in this subsection as eligible for any firearm  
18 enhancements based on the classification of the completed felony  
19 crime. If the offender is being sentenced for more than one offense,  
20 the firearm enhancement or enhancements must be added to the total  
21 period of confinement for all offenses, regardless of which  
22 underlying offense is subject to a firearm enhancement. If the  
23 offender or an accomplice was armed with a firearm as defined in RCW  
24 9.41.010 and the offender is being sentenced for an anticipatory  
25 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
26 this subsection as eligible for any firearm enhancements, the  
27 following additional times shall be added to the standard sentence  
28 range determined under subsection (2) of this section based on the  
29 felony crime of conviction as classified under RCW 9A.28.020:

30 (a) Five years for any felony defined under any law as a class A  
31 felony or with a statutory maximum sentence of at least twenty years,  
32 or both, and not covered under (f) of this subsection;

33 (b) Three years for any felony defined under any law as a class B  
34 felony or with a statutory maximum sentence of ten years, or both,  
35 and not covered under (f) of this subsection;

36 (c) Eighteen months for any felony defined under any law as a  
37 class C felony or with a statutory maximum sentence of five years, or  
38 both, and not covered under (f) of this subsection;

1 (d) If the offender is being sentenced for any firearm  
2 enhancements under (a), (b), and/or (c) of this subsection and the  
3 offender has previously been sentenced for any deadly weapon  
4 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
5 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
6 both, all firearm enhancements under this subsection shall be twice  
7 the amount of the enhancement listed;

8 (e) Notwithstanding any other provision of law, all firearm  
9 enhancements under this section are mandatory, shall be served in  
10 total confinement, and shall run consecutively to all other  
11 sentencing provisions, including other firearm or deadly weapon  
12 enhancements, for all offenses sentenced under this chapter. However,  
13 whether or not a mandatory minimum term has expired, an offender  
14 serving a sentence under this subsection may be:

15 (i) Granted an extraordinary medical placement when authorized  
16 under RCW 9.94A.728(1)(c); or

17 (ii) Released under the provisions of RCW 9.94A.730 or section 9  
18 of this act;

19 (f) The firearm enhancements in this section shall apply to all  
20 felony crimes except the following: Possession of a machine gun,  
21 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
22 unlawful possession of a firearm in the first and second degree, and  
23 use of a machine gun in a felony;

24 (g) If the standard sentence range under this section exceeds the  
25 statutory maximum sentence for the offense, the statutory maximum  
26 sentence shall be the presumptive sentence unless the offender is a  
27 persistent offender. If the addition of a firearm enhancement  
28 increases the sentence so that it would exceed the statutory maximum  
29 for the offense, the portion of the sentence representing the  
30 enhancement may not be reduced.

31 (4) The following additional times shall be added to the standard  
32 sentence range for felony crimes committed after July 23, 1995, if  
33 the offender or an accomplice was armed with a deadly weapon other  
34 than a firearm as defined in RCW 9.41.010 and the offender is being  
35 sentenced for one of the crimes listed in this subsection as eligible  
36 for any deadly weapon enhancements based on the classification of the  
37 completed felony crime. If the offender is being sentenced for more  
38 than one offense, the deadly weapon enhancement or enhancements must  
39 be added to the total period of confinement for all offenses,  
40 regardless of which underlying offense is subject to a deadly weapon

1 enhancement. If the offender or an accomplice was armed with a deadly  
2 weapon other than a firearm as defined in RCW 9.41.010 and the  
3 offender is being sentenced for an anticipatory offense under chapter  
4 9A.28 RCW to commit one of the crimes listed in this subsection as  
5 eligible for any deadly weapon enhancements, the following additional  
6 times shall be added to the standard sentence range determined under  
7 subsection (2) of this section based on the felony crime of  
8 conviction as classified under RCW 9A.28.020:

9 (a) Two years for any felony defined under any law as a class A  
10 felony or with a statutory maximum sentence of at least twenty years,  
11 or both, and not covered under (f) of this subsection;

12 (b) One year for any felony defined under any law as a class B  
13 felony or with a statutory maximum sentence of ten years, or both,  
14 and not covered under (f) of this subsection;

15 (c) Six months for any felony defined under any law as a class C  
16 felony or with a statutory maximum sentence of five years, or both,  
17 and not covered under (f) of this subsection;

18 (d) If the offender is being sentenced under (a), (b), and/or (c)  
19 of this subsection for any deadly weapon enhancements and the  
20 offender has previously been sentenced for any deadly weapon  
21 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
22 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
23 both, all deadly weapon enhancements under this subsection shall be  
24 twice the amount of the enhancement listed;

25 (e) Notwithstanding any other provision of law, all deadly weapon  
26 enhancements under this section are mandatory, shall be served in  
27 total confinement, and shall run consecutively to all other  
28 sentencing provisions, including other firearm or deadly weapon  
29 enhancements, for all offenses sentenced under this chapter. However,  
30 whether or not a mandatory minimum term has expired, an offender  
31 serving a sentence under this subsection may be:

32 (i) Granted an extraordinary medical placement when authorized  
33 under RCW 9.94A.728(1)(c); or

34 (ii) Released under the provisions of RCW 9.94A.730 or section 9  
35 of this act;

36 (f) The deadly weapon enhancements in this section shall apply to  
37 all felony crimes except the following: Possession of a machine gun,  
38 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
39 unlawful possession of a firearm in the first and second degree, and  
40 use of a machine gun in a felony;

1 (g) If the standard sentence range under this section exceeds the  
2 statutory maximum sentence for the offense, the statutory maximum  
3 sentence shall be the presumptive sentence unless the offender is a  
4 persistent offender. If the addition of a deadly weapon enhancement  
5 increases the sentence so that it would exceed the statutory maximum  
6 for the offense, the portion of the sentence representing the  
7 enhancement may not be reduced.

8 (5) The following additional times shall be added to the standard  
9 sentence range if the offender or an accomplice committed the offense  
10 while in a county jail or state correctional facility and the  
11 offender is being sentenced for one of the crimes listed in this  
12 subsection. If the offender or an accomplice committed one of the  
13 crimes listed in this subsection while in a county jail or state  
14 correctional facility, and the offender is being sentenced for an  
15 anticipatory offense under chapter 9A.28 RCW to commit one of the  
16 crimes listed in this subsection, the following additional times  
17 shall be added to the standard sentence range determined under  
18 subsection (2) of this section:

19 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
20 (a) or (b) or 69.50.410;

21 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
22 (c), (d), or (e);

23 (c) Twelve months for offenses committed under RCW 69.50.4013.

24 For the purposes of this subsection, all of the real property of  
25 a state correctional facility or county jail shall be deemed to be  
26 part of that facility or county jail.

27 (6) An additional twenty-four months shall be added to the  
28 standard sentence range for any ranked offense involving a violation  
29 of chapter 69.50 RCW if the offense was also a violation of RCW  
30 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
31 run consecutively to all other sentencing provisions, for all  
32 offenses sentenced under this chapter.

33 (7) An additional two years shall be added to the standard  
34 sentence range for vehicular homicide committed while under the  
35 influence of intoxicating liquor or any drug as defined by RCW  
36 46.61.502 for each prior offense as defined in RCW 46.61.5055.

37 Notwithstanding any other provision of law, all impaired driving  
38 enhancements under this subsection are mandatory, shall be served in  
39 total confinement, and shall run consecutively to all other



1 sentencing provisions, including other impaired driving enhancements,  
2 for all offenses sentenced under this chapter.

3 An offender serving a sentence under this subsection may be  
4 granted an extraordinary medical placement when authorized under RCW  
5 9.94A.728(1)(c).

6 (8)(a) The following additional times shall be added to the  
7 standard sentence range for felony crimes committed on or after July  
8 1, 2006, if the offense was committed with sexual motivation, as that  
9 term is defined in RCW 9.94A.030. If the offender is being sentenced  
10 for more than one offense, the sexual motivation enhancement must be  
11 added to the total period of total confinement for all offenses,  
12 regardless of which underlying offense is subject to a sexual  
13 motivation enhancement. If the offender committed the offense with  
14 sexual motivation and the offender is being sentenced for an  
15 anticipatory offense under chapter 9A.28 RCW, the following  
16 additional times shall be added to the standard sentence range  
17 determined under subsection (2) of this section based on the felony  
18 crime of conviction as classified under RCW 9A.28.020:

19 (i) Two years for any felony defined under the law as a class A  
20 felony or with a statutory maximum sentence of at least twenty years,  
21 or both;

22 (ii) Eighteen months for any felony defined under any law as a  
23 class B felony or with a statutory maximum sentence of ten years, or  
24 both;

25 (iii) One year for any felony defined under any law as a class C  
26 felony or with a statutory maximum sentence of five years, or both;

27 (iv) If the offender is being sentenced for any sexual motivation  
28 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
29 the offender has previously been sentenced for any sexual motivation  
30 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
31 (iii) of this subsection, all sexual motivation enhancements under  
32 this subsection shall be twice the amount of the enhancement listed;

33 (b) Notwithstanding any other provision of law, all sexual  
34 motivation enhancements under this subsection are mandatory, shall be  
35 served in total confinement, and shall run consecutively to all other  
36 sentencing provisions, including other sexual motivation  
37 enhancements, for all offenses sentenced under this chapter. However,  
38 whether or not a mandatory minimum term has expired, an offender  
39 serving a sentence under this subsection may be:

1 (i) Granted an extraordinary medical placement when authorized  
2 under RCW 9.94A.728(1)(c); or

3 (ii) Released under the provisions of RCW 9.94A.730 or section 9  
4 of this act;

5 (c) The sexual motivation enhancements in this subsection apply  
6 to all felony crimes;

7 (d) If the standard sentence range under this subsection exceeds  
8 the statutory maximum sentence for the offense, the statutory maximum  
9 sentence shall be the presumptive sentence unless the offender is a  
10 persistent offender. If the addition of a sexual motivation  
11 enhancement increases the sentence so that it would exceed the  
12 statutory maximum for the offense, the portion of the sentence  
13 representing the enhancement may not be reduced;

14 (e) The portion of the total confinement sentence which the  
15 offender must serve under this subsection shall be calculated before  
16 any earned early release time is credited to the offender;

17 (f) Nothing in this subsection prevents a sentencing court from  
18 imposing a sentence outside the standard sentence range pursuant to  
19 RCW 9.94A.535.

20 (9) An additional one-year enhancement shall be added to the  
21 standard sentence range for the felony crimes of RCW 9A.44.073,  
22 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
23 or after July 22, 2007, if the offender engaged, agreed, or offered  
24 to engage the victim in the sexual conduct in return for a fee. If  
25 the offender is being sentenced for more than one offense, the  
26 one-year enhancement must be added to the total period of total  
27 confinement for all offenses, regardless of which underlying offense  
28 is subject to the enhancement. If the offender is being sentenced for  
29 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
30 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
31 offender attempted, solicited another, or conspired to engage, agree,  
32 or offer to engage the victim in the sexual conduct in return for a  
33 fee, an additional one-year enhancement shall be added to the  
34 standard sentence range determined under subsection (2) of this  
35 section. For purposes of this subsection, "sexual conduct" means  
36 sexual intercourse or sexual contact, both as defined in chapter  
37 9A.44 RCW.

38 (10)(a) For a person age eighteen or older convicted of any  
39 criminal street gang-related felony offense for which the person  
40 compensated, threatened, or solicited a minor in order to involve the

1 minor in the commission of the felony offense, the standard sentence  
2 range is determined by locating the sentencing grid sentence range  
3 defined by the appropriate offender score and the seriousness level  
4 of the completed crime, and multiplying the range by one hundred  
5 twenty-five percent. If the standard sentence range under this  
6 subsection exceeds the statutory maximum sentence for the offense,  
7 the statutory maximum sentence is the presumptive sentence unless the  
8 offender is a persistent offender.

9 (b) This subsection does not apply to any criminal street gang-  
10 related felony offense for which involving a minor in the commission  
11 of the felony offense is an element of the offense.

12 (c) The increased penalty specified in (a) of this subsection is  
13 unavailable in the event that the prosecution gives notice that it  
14 will seek an exceptional sentence based on an aggravating factor  
15 under RCW 9.94A.535.

16 (11) An additional twelve months and one day shall be added to  
17 the standard sentence range for a conviction of attempting to elude a  
18 police vehicle as defined by RCW 46.61.024, if the conviction  
19 included a finding by special allegation of endangering one or more  
20 persons under RCW 9.94A.834.

21 (12) An additional twelve months shall be added to the standard  
22 sentence range for an offense that is also a violation of RCW  
23 9.94A.831.

24 (13) An additional twelve months shall be added to the standard  
25 sentence range for vehicular homicide committed while under the  
26 influence of intoxicating liquor or any drug as defined by RCW  
27 46.61.520 or for vehicular assault committed while under the  
28 influence of intoxicating liquor or any drug as defined by RCW  
29 46.61.522, or for any felony driving under the influence (RCW  
30 46.61.502(6)) or felony physical control under the influence (RCW  
31 46.61.504(6)) for each child passenger under the age of sixteen who  
32 is an occupant in the defendant's vehicle. These enhancements shall  
33 be mandatory, shall be served in total confinement, and shall run  
34 consecutively to all other sentencing provisions. If the addition of  
35 a minor child enhancement increases the sentence so that it would  
36 exceed the statutory maximum for the offense, the portion of the  
37 sentence representing the enhancement may not be reduced.

38 (14) An additional twelve months shall be added to the standard  
39 sentence range for an offense that is also a violation of RCW  
40 9.94A.832.

1       **Sec. 15.** RCW 9.94A.6332 and 2014 c 130 s 3 are each amended to  
2 read as follows:

3       The procedure for imposing sanctions for violations of sentence  
4 conditions or requirements is as follows:

5       (1) If the offender was sentenced under the drug offender  
6 sentencing alternative, any sanctions shall be imposed by the  
7 department or the court pursuant to RCW 9.94A.660.

8       (2) If the offender was sentenced under the special sex offender  
9 sentencing alternative, any sanctions shall be imposed by the  
10 department or the court pursuant to RCW 9.94A.670.

11       (3) If the offender was sentenced under the parenting sentencing  
12 alternative, any sanctions shall be imposed by the department or by  
13 the court pursuant to RCW 9.94A.655.

14       (4) If a sex offender was sentenced pursuant to RCW 9.94A.507,  
15 any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

16       (5) If the offender was released pursuant to RCW 9.94A.730, any  
17 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

18       (6) If the offender was sentenced pursuant to RCW 10.95.030(3) or  
19 10.95.035, any sanctions shall be imposed by the board pursuant to  
20 RCW 9.95.435.

21       (7) If the offender was released pursuant to section 9 of this  
22 act, any sanctions shall be imposed by the community review board  
23 pursuant to RCW 9.95.435.

24       (8) In any other case, if the offender is being supervised by the  
25 department, any sanctions shall be imposed by the department pursuant  
26 to RCW 9.94A.737. If a probationer is being supervised by the  
27 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
28 receipt of a violation hearing report from the department, the court  
29 retains any authority that those statutes provide to respond to a  
30 probationer's violation of conditions.

31       (~~(8)~~) (9) If the offender is not being supervised by the  
32 department, any sanctions shall be imposed by the court pursuant to  
33 RCW 9.94A.6333.

34       NEW SECTION.       **Sec. 16.** (1) Subject to the availability of  
35 amounts appropriated for this specific purpose, by December 1, 2017,  
36 the sentencing guidelines commission shall contract for the services  
37 of an external consultant to evaluate the state's sentencing laws and  
38 practices. The consultant must have demonstrated experience and  
39 knowledge in Washington's sentencing system and other sentencing

1 systems and models in other states and nations. The consultant must  
2 have demonstrated experience in conducting significant research  
3 studies. The evaluation must include:

4 (a) An assessment of sentencing complexities in law and in  
5 implementation, including an assessment of possible challenges faced  
6 by the courts, jails, and the department of corrections;

7 (b) An assessment of whether the sentencing reform act conforms  
8 to its intended purposes, including reducing disparity between  
9 similarly situated offenders;

10 (c) An assessment of the sentencing changes adopted by the  
11 legislature since 1981, including frequency, nature, and impact;

12 (d) An assessment of sentence lengths among different categories  
13 of offenders and whether those sentences conform to current research  
14 literature on the relationship between sentences lengths and  
15 recidivism;

16 (e) An assessment of the consistent or inconsistent application  
17 and impact of sentencing laws on offenders and the community;

18 (f) An assessment of the state's sentencing laws and practices as  
19 compared to other states and other sentencing models including, but  
20 not limited to, whether the current sentencing laws and practices  
21 promote public safety, fairness, and equity as compared to other  
22 models of sentencing;

23 (g) An assessment of whether the elimination of the parole system  
24 and establishment of determinate sentencing is connected to or has  
25 resulted in excessive incarceration of low-risk offenders;

26 (h) Recommendations for changing and improving sentencing laws  
27 and practices to address implementation challenges, promote public  
28 safety, reduce recidivism, reduce disparity, reduce incarceration  
29 rates for low-risk offenders, reduce costs to taxpayers, and promote  
30 fairness and equity, including a phased implementation plan for  
31 possible retroactive and prospective changes; and

32 (i) Recommendations for establishing an ongoing review of  
33 sentencing laws and practices.

34 (2) The consultant shall complete its evaluation and submit a  
35 report to the commission, the appropriate committees of the  
36 legislature, and the governor by September 1, 2018. The contract for  
37 services must include a requirement for two briefings before the  
38 legislature, one in the house of representatives and one in the  
39 senate, in the 2019 regular legislative session.

1        NEW SECTION.    **Sec. 17.**    This act applies retroactively to persons  
2 incarcerated on the effective date of this section, regardless of the  
3 date of the offense or conviction.

4        NEW SECTION.    **Sec. 18.**    This act does not create any right or  
5 entitlement to release from incarceration before the end of a term of  
6 incarceration imposed by the court.

7        NEW SECTION.    **Sec. 19.**    Sections 2 through 8 of this act  
8 constitute a new chapter in Title 9 RCW.

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