
SENATE BILL 6288

State of Washington 57th Legislature

2002 Regular Session

By Senators Long and Hargrove

Read first time 01/14/2002. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to technical, clarifying, and nonsubstantive
2 amendments to chapter 12, Laws of 2001 2nd sp. sess.; amending RCW
3 71.09.020, 71.09.250, 71.09.255, 71.09.265, 71.09.275, 71.09.290,
4 71.09.300, 71.09.325, 9.95.011, 9.95.017, 9.95.055, 9.95.070, 9.95.110,
5 9.95.120, 9.95.435, 9.95.440, 9A.44.093, 9A.44.096, 18.155.030, and
6 71.09.270; and adding a new section to chapter 72.09 RCW.

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

8 **Sec. 1.** RCW 71.09.020 and 2001 2nd sp.s. c 12 s 102 are each
9 amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Department" means the department of social and health
13 services.

14 (2) "Less restrictive alternative" means court-ordered treatment in
15 a setting less restrictive than total confinement which satisfies the
16 conditions set forth in RCW 71.09.092.

17 (3) "Likely to engage in predatory acts of sexual violence if not
18 confined in a secure facility" means that the person more probably than
19 not will engage in such acts if released unconditionally from detention

1 on the sexually violent predator petition. Such likelihood must be
2 evidenced by a recent overt act if the person is not totally confined
3 at the time the petition is filed under RCW 71.09.030.

4 (4) "Mental abnormality" means a congenital or acquired condition
5 affecting the emotional or volitional capacity which predisposes the
6 person to the commission of criminal sexual acts in a degree
7 constituting such person a menace to the health and safety of others.

8 (5) "Predatory" means acts directed towards: (a) Strangers; (b)
9 individuals with whom a relationship has been established or promoted
10 for the primary purpose of victimization; or (c) persons of casual
11 acquaintance with whom no substantial personal relationship exists.

12 (6) "Recent overt act" means any act or threat that has either
13 caused harm of a sexually violent nature or creates a reasonable
14 apprehension of such harm in the mind of an objective person who knows
15 of the history and mental condition of the person engaging in the act.

16 (7) "Risk potential activity" or "risk potential facility" means an
17 activity or facility that provides a higher incidence of risk to the
18 public from persons conditionally released from the special commitment
19 center. Risk potential activities and facilities include: Public and
20 private schools, school bus stops, licensed day care and licensed
21 preschool facilities, public parks, publicly dedicated trails, sports
22 fields, playgrounds, recreational and community centers, churches,
23 synagogues, temples, mosques, and public libraries.

24 (8) "Secretary" means the secretary of social and health services
25 or the secretary's designee.

26 (9) "Secure facility" means a residential facility for persons
27 civilly confined under the provisions of this chapter that includes
28 security measures sufficient to protect the community. Such facilities
29 include total confinement facilities, secure community transition
30 facilities, and any residence used as a court-ordered placement under
31 RCW 71.09.096.

32 (10) "Secure community transition facility" means a residential
33 facility for persons civilly committed and conditionally released to a
34 less restrictive alternative under this chapter. A secure community
35 transition facility has supervision and security, and either provides
36 or ensures the provision of sex offender treatment services. Secure
37 community transition facilities include but are not limited to the
38 (~~facilities~~) facility established pursuant to RCW 71.09.250(1)(a)(i)

1 and any community-based facilities established under this chapter and
2 operated by the secretary or under contract with the secretary.

3 (11) "Sexually violent offense" means an act committed on, before,
4 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
5 rape in the first degree, rape in the second degree by forcible
6 compulsion, rape of a child in the first or second degree, statutory
7 rape in the first or second degree, indecent liberties by forcible
8 compulsion, indecent liberties against a child under age fourteen,
9 incest against a child under age fourteen, or child molestation in the
10 first or second degree; (b) a felony offense in effect at any time
11 prior to July 1, 1990, that is comparable to a sexually violent offense
12 as defined in (a) of this subsection, or any federal or out-of-state
13 conviction for a felony offense that under the laws of this state would
14 be a sexually violent offense as defined in this subsection; (c) an act
15 of murder in the first or second degree, assault in the first or second
16 degree, assault of a child in the first or second degree, kidnapping in
17 the first or second degree, burglary in the first degree, residential
18 burglary, or unlawful imprisonment, which act, either at the time of
19 sentencing for the offense or subsequently during civil commitment
20 proceedings pursuant to this chapter, has been determined beyond a
21 reasonable doubt to have been sexually motivated, as that term is
22 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
23 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
24 to commit one of the felonies designated in (a), (b), or (c) of this
25 subsection.

26 (12) "Sexually violent predator" means any person who has been
27 convicted of or charged with a crime of sexual violence and who suffers
28 from a mental abnormality or personality disorder which makes the
29 person likely to engage in predatory acts of sexual violence if not
30 confined in a secure facility.

31 (13) "Total confinement facility" means a secure facility that
32 provides supervision and sex offender treatment services in a total
33 confinement setting. Total confinement facilities include the special
34 commitment center and any similar facility designated as a (~~secure~~)
35 total confinement facility by the secretary.

36 **Sec. 2.** RCW 71.09.250 and 2001 2nd sp.s. c 12 s 201 are each
37 amended to read as follows:

1 (1)(a) The secretary is authorized to site, construct, occupy, and
2 operate (i) a secure community transition facility on McNeil Island for
3 persons authorized to petition for a less restrictive alternative under
4 RCW 71.09.090(1) and who are conditionally released; and (ii) a special
5 commitment center on McNeil Island with up to four hundred four beds as
6 a total confinement facility under this chapter, subject to
7 appropriated funding for those purposes. The secure community
8 transition facility shall be authorized for the number of beds needed
9 to ensure compliance with the orders of the superior courts under this
10 chapter and the federal district court for the western district of
11 Washington. The total number of beds in the secure community
12 transition facility shall be limited to twenty-four, consisting of up
13 to fifteen transitional beds (~~((shall be limited to fifteen))~~) and up to
14 nine pretransitional beds. The residents occupying (~~((these))~~) the
15 transitional beds shall be the only residents eligible for transitional
16 services occurring in Pierce county. In no event shall more than
17 fifteen residents of the secure community transition facility be
18 participating in off-island transitional, educational, or employment
19 activity at the same time in Pierce county. The department shall
20 provide the Pierce county sheriff, or his or her designee, with a list
21 of the fifteen residents so designated, along with their photographs
22 and physical descriptions, and (~~((it))~~) the list shall be immediately
23 updated whenever a residential change occurs. The Pierce county
24 sheriff, or his or her designee, shall be provided an opportunity to
25 confirm the residential status of each resident leaving McNeil Island.

26 (b) For purposes of this subsection, "transitional beds" means beds
27 only for residents (~~((in halfway house status))~~) who are judged by a
28 qualified expert to be suitable to leave the island for treatment,
29 education, and employment.

30 (2)(a) The secretary is authorized to site, either within the
31 secure community transition facility established pursuant to subsection
32 (1)(a)(i) of this section, or within the special commitment center, up
33 to nine pretransitional beds.

34 (b) Residents assigned to pretransitional beds shall not be
35 permitted to leave McNeil Island for education, employment, treatment,
36 or community activities in Pierce county.

37 (c) For purposes of this subsection, "pretransitional beds" means
38 beds for residents whose progress toward a less secure residential
39 environment and transition into more complete community involvement is

1 projected to take substantially longer than a typical resident of the
2 special commitment center.

3 (3) Notwithstanding RCW 36.70A.103 or any other law, this statute
4 preempts and supersedes local plans, development regulations,
5 permitting requirements, inspection requirements, and all other laws as
6 necessary to enable the secretary to site, construct, occupy, and
7 operate a secure community transition facility on McNeil Island and a
8 total confinement facility on McNeil Island.

9 (4) To the greatest extent possible, until June 30, 2003, persons
10 who were not civilly committed from the county in which the secure
11 community transition facility established pursuant to subsection (1) of
12 this section is located may not be conditionally released to a setting
13 in that same county less restrictive than that facility.

14 (5) As of June 26, 2001, the state shall immediately cease any
15 efforts in effect on such date to site secure community transition
16 facilities, other than the facility authorized by subsection (1) of
17 this section, and shall instead site such facilities in accordance with
18 the provisions of this section.

19 (6) The department must:

20 (a) Identify the minimum and maximum number of secure community
21 transition facility beds in addition to the facility established under
22 subsection (1) of this section that may be necessary for the period of
23 May 2004 through May 2007 and provide notice of these numbers to all
24 counties by August 31, 2001; and

25 ~~(b) ((In consultation with the joint select committee established~~
26 ~~in section 225, chapter 12, Laws of 2001 2nd sp. sess., develop and~~
27 ~~publish policy guidelines for the siting and operation of secure~~
28 ~~community transition facilities by October 1, 2001; and~~

29 ~~(c))~~ Provide a status report to the appropriate committees of the
30 legislature by December 1, 2002, on the development of facilities under
31 the incentive program established in RCW 71.09.255. The report shall
32 include a projection of the anticipated number of secure community
33 transition facility beds that will become operational between May 2004
34 and May 2007. If it appears that an insufficient number of beds will
35 be operational, the department's report shall recommend a progression
36 of methods to facilitate siting in counties and cities including, if
37 necessary, preemption of local land use planning process and other
38 laws.

1 (7)(a) The total number of secure community transition facility
2 beds that may be required to be sited in a county between June 26,
3 2001, and June 30, 2008, may be no greater than the total number of
4 persons civilly committed from that county, or detained at the special
5 commitment center under a pending civil commitment petition from that
6 county where a finding of probable cause had been made on April 1,
7 2001. The total number of secure community transition facility beds
8 required to be sited in each county between July 1, 2008, and June 30,
9 2015, may be no greater than the total number of persons civilly
10 committed from that county or detained at the special commitment center
11 under a pending civil commitment petition from that county where a
12 finding of probable cause had been made as of July 1, 2008.

13 (b) Counties and cities that provide secure community transition
14 facility beds above the maximum number that they could be required to
15 site under this subsection are eligible for a bonus grant under the
16 incentive provisions in RCW 71.09.255. The county where the special
17 commitment center is located shall receive this bonus grant for the
18 number of beds in the facility established in subsection (1) of this
19 section in excess of the maximum number established by this subsection.

20 (c) No secure community transition facilities in addition to the
21 one established in subsection (1) of this section may be required to be
22 sited in the county where the special commitment center is located
23 until after June 30, 2008, provided however, that the county and its
24 cities may elect to site additional secure community transition
25 facilities and shall be eligible under the incentive provisions of RCW
26 71.09.255 for any additional facilities meeting the requirements of
27 that section.

28 (8) In identifying potential sites within a county for the location
29 of a secure community transition facility, the department shall work
30 with and assist local governments to provide for the equitable
31 distribution of such facilities. In coordinating and deciding upon the
32 siting of secure community transition facilities, great weight shall be
33 given by the county and cities within the county to:

34 (a) The number and location of existing residential facility beds
35 operated by the department of corrections or the mental health division
36 of the department of social and health services in each jurisdiction in
37 the county; and

1 (b) The number of registered sex offenders classified as level II
2 or level III and the number of sex offenders registered as homeless
3 residing in each jurisdiction in the county.

4 (9)(a) "Equitable distribution" means siting or locating secure
5 community transition facilities in a manner that will not cause a
6 disproportionate grouping of similar facilities either in any one
7 county, or in any one jurisdiction or community within a county, as
8 relevant; and

9 (b) "Jurisdiction" means a city, town, or geographic area of a
10 county in which (~~district~~) distinct political or judicial authority
11 may be exercised.

12 **Sec. 3.** RCW 71.09.255 and 2001 2nd sp.s. c 12 s 204 are each
13 amended to read as follows:

14 (1) Upon receiving the notification required by RCW 71.09.250,
15 counties must promptly notify the cities within the county of the
16 maximum number of secure community transition facility beds that may be
17 required and the projected number of beds to be needed in that county.

18 (2) The incentive grants provided under this section are subject to
19 the following provisions:

20 (a) Counties and the cities within the county must notify each
21 other of siting plans to promote the establishment and equitable
22 distribution of secure community transition facilities;

23 (b) Development regulations, ordinances, plans, laws, and criteria
24 established for siting must be consistent with statutory requirements
25 and (~~rules~~) policies applicable to siting and operating secure
26 community transition facilities;

27 (c) The minimum size for any facility is three beds; and

28 (d) The department must approve any sites selected.

29 (3) Any county or city that makes a commitment to initiate the
30 process to site one or more secure community transition facilities by
31 February 1, 2002, shall receive a planning grant as proposed and
32 approved by the department of community, trade, and economic
33 development.

34 (4) Any county or city that has issued all necessary permits by May
35 1, 2003, for one or more secure community transition facilities that
36 comply with the requirements of this section shall receive an incentive
37 grant in the amount of fifty thousand dollars for each bed sited.

1 (5) To encourage the rapid permitting of sites, any county or city
2 that has issued all necessary permits by January 1, 2003, for one or
3 more secure community transition facilities that comply with the
4 requirements of this section shall receive a bonus in the amount of
5 twenty percent of the amount provided under subsection (4) of this
6 section.

7 (6) Any county or city that establishes secure community transition
8 facility beds in excess of the maximum number that could be required to
9 be sited in that county shall receive a bonus payment of one hundred
10 thousand dollars for each bed established in excess of the maximum
11 requirement.

12 (7) No payment shall be made under subsection (4), (5), or (6) of
13 this section until all necessary permits have been issued.

14 **Sec. 4.** RCW 71.09.265 and 2001 2nd sp.s. c 12 s 208 are each
15 amended to read as follows:

16 (1) The department shall make reasonable efforts to distribute the
17 impact of the employment, education, and social services needs of the
18 residents of the secure community transition facility established
19 pursuant to RCW 71.09.250(1)(a)(i) among the adjoining counties and not
20 to concentrate the residents' use of resources in any one community.
21 The department's efforts to distribute the impact is limited to
22 locations within a reasonable commute.

23 (2) The department shall develop policies to ensure that, to the
24 extent possible, placement of persons eligible in the future for
25 conditional release to a setting less restrictive than the facility
26 established pursuant to RCW 71.09.250(1)(a)(i) will be equitably
27 distributed among the counties and within jurisdictions in the county.

28 **Sec. 5.** RCW 71.09.275 and 2001 2nd sp.s. c 12 s 211 are each
29 amended to read as follows:

30 ~~(1) ((By August 1, 2001, the department must provide the~~
31 ~~appropriate committees of the legislature with a transportation plan to~~
32 ~~address the issues of coordinating the movement of residents of the~~
33 ~~secure community transition facility established pursuant to RCW~~
34 ~~71.09.250(1) between McNeil Island and the mainland with the movement~~
35 ~~of others who must use the same docks or equipment within the funds~~
36 ~~appropriated for this purpose.~~

1 ~~(2) If the department does not provide a separate vessel for~~
2 ~~transporting residents of the secure community transition facility~~
3 ~~established in RCW 71.09.250(1) between McNeil Island and the mainland,~~
4 ~~the plan shall include at least the following components:~~

5 ~~(a) The residents shall be separated from minors and vulnerable~~
6 ~~adults, except vulnerable adults who have been found to be sexually~~
7 ~~violent predators.~~

8 ~~(b) The residents shall not be transported during times when~~
9 ~~children are normally coming to and from the mainland for school.~~

10 ~~(3))~~ The department shall designate a separate waiting area at the
11 points of debarkation, and residents shall be required to remain in
12 this area while awaiting transportation.

13 ~~((4))~~ (2) The department shall provide law enforcement agencies
14 in the counties and cities in which residents of the secure community
15 transition facility established pursuant to RCW 71.09.250(1)(a)(i)
16 regularly participate in employment, education, or social services, or
17 through which these persons are regularly transported, with a copy of
18 the court's order of conditional release with respect to these persons.

19 **Sec. 6.** RCW 71.09.290 and 2001 2nd sp.s. c 12 s 214 are each
20 amended to read as follows:

21 The secretary shall establish policy guidelines for the siting of
22 secure community transition facilities, other than the secure community
23 transition facility established pursuant to RCW 71.09.250(1)(a)(i),
24 which shall include at least the following minimum requirements:

25 (1) The following criteria must be considered prior to any real
26 property being listed for consideration for the location of or use as
27 a secure community transition facility:

28 (a) The proximity and response time criteria established under RCW
29 71.09.285;

30 (b) The site or building is available for lease for the anticipated
31 use period or for purchase;

32 (c) Security monitoring services and appropriate back-up systems
33 are available and reliable;

34 (d) Appropriate mental health and sex offender treatment providers
35 must be available within a reasonable commute; and

36 (e) Appropriate permitting for a secure community transition
37 facility must be possible under the zoning code of the local
38 jurisdiction.

1 (2) For sites which meet the criteria of subsection (1) of this
2 section, the department shall analyze and compare the criteria in
3 subsections (3) through (5) of this section using the method
4 established in RCW 71.09.285.

5 (3) Public safety and security criteria shall include at least the
6 following:

7 (a) Whether limited visibility between the facility and adjacent
8 properties can be achieved prior to placement of any person;

9 (b) The distance from, and number of, risk potential activities and
10 facilities, as measured using the ~~((rules))~~ policies adopted under RCW
11 71.09.285;

12 (c) The existence of or ability to establish barriers between the
13 site and the risk potential facilities and activities;

14 (d) Suitability of the buildings to be used for the secure
15 community transition facility with regard to existing or feasibly
16 modified features; and

17 (e) The availability of electronic monitoring that allows a
18 resident's location to be determined with specificity.

19 (4) Site characteristics criteria shall include at least the
20 following:

21 (a) Reasonableness of rental, lease, or sale terms including length
22 and renewability of a lease or rental agreement;

23 (b) Traffic and access patterns associated with the real property;

24 (c) Feasibility of complying with zoning requirements within the
25 necessary time frame; and

26 (d) A contractor or contractors are available to install, monitor,
27 and repair the necessary security and alarm systems.

28 (5) Program characteristics criteria shall include at least the
29 following:

30 (a) Reasonable proximity to available medical, mental health, sex
31 offender, and chemical dependency treatment providers and facilities;

32 (b) Suitability of the location for programming, staffing, and
33 support considerations;

34 (c) Proximity to employment, educational, vocational, and other
35 treatment plan components.

36 (6) For purposes of this section "available" or "availability" of
37 qualified treatment providers includes provider qualifications and
38 willingness to provide services, average commute time, and cost of
39 services.

1 **Sec. 7.** RCW 71.09.300 and 2001 2nd sp.s. c 12 s 216 are each
2 amended to read as follows:

3 ~~((1))~~ Secure community transition facilities shall meet the
4 following minimum staffing requirements:

5 ~~((a))~~ (1) At any time the census of a facility is six or fewer
6 residents, the facility shall maintain a minimum staffing ratio of one
7 staff per resident during normal waking hours and two awake staff per
8 three residents during normal sleeping hours.

9 ~~((b))~~ (2) At any time the census of a facility is six or fewer
10 residents, all staff shall be classified as residential rehabilitation
11 counselor II or have a classification that indicates ~~((a))~~ an
12 equivalent or higher level of skill, experience, and training.

13 ~~((c))~~ (3) Before being assigned to a facility, all staff shall
14 have training in sex offender issues, self-defense, and crisis de-
15 escalation skills in addition to departmental orientation and, as
16 appropriate, management training. All staff with resident treatment or
17 care duties must participate in ongoing in-service training.

18 ~~((d))~~ (4) All staff must pass a departmental background check and
19 the check is not subject to the limitations in chapter 9.96A RCW. A
20 person who has been convicted of a felony, or any sex offense, may not
21 be employed at the secure community transition facility or be approved
22 as an escort for a resident of the facility.

23 ~~((2) With respect to the facility established pursuant to RCW
24 71.09.250(1), the department shall, no later than December 1, 2001,
25 provide a staffing plan to the appropriate committees of the
26 legislature that will cover the growth of that facility to its full
27 capacity.))~~

28 **Sec. 8.** RCW 71.09.325 and 2001 2nd sp.s. c 12 s 221 are each
29 amended to read as follows:

30 (1) The secretary shall adopt a violation reporting policy for
31 persons conditionally released to less restrictive alternative
32 placements. The policy shall require written documentation by the
33 department and service providers of all violations of conditions set by
34 the department, the department of corrections, or the court and
35 establish criteria for returning a violator to the special commitment
36 center or a secure community transition facility with a higher degree
37 of security. Any conditionally released person who commits a serious
38 violation of conditions shall be returned to the special commitment

1 center, unless arrested by a law enforcement officer, and the court
2 shall be notified immediately and shall initiate proceedings under RCW
3 71.09.098 to revoke or modify the less restrictive alternative
4 placement. Nothing in this section limits the authority of the
5 department to return a person to the special commitment center based on
6 a violation that is not a serious violation as defined in this section.
7 For the purposes of this section, "serious violation" includes but is
8 not limited to:

9 (a) The commission of any criminal offense;

10 (b) Any unlawful use or possession of a controlled substance; and

11 (c) Any violation of conditions targeted to address the person's
12 documented pattern of offense that increases the risk to public safety.

13 (2) When a person is conditionally released to a less restrictive
14 alternative under this chapter and is under the supervision of the
15 department of corrections, notice of any violation of the person's
16 conditions of release must also be made to the department of
17 corrections.

18 (3) Whenever the secretary contracts with a service provider to
19 operate a secure community transition facility, the contract shall
20 include a requirement that the service provider must report to the
21 department (~~of social and health services~~) any known violation of
22 conditions committed by any resident of the secure community transition
23 facility.

24 (4) The secretary shall document in writing all violations,
25 penalties, actions by the department (~~of social and health services~~)
26 to remove persons from a secure community transition facility, and
27 contract terminations. The secretary shall compile this information
28 and submit it to the appropriate committees of the legislature on an
29 annual basis. The secretary shall give great weight to a service
30 provider's record of violations, penalties, actions by the department
31 (~~of social and health services~~) or the department of corrections to
32 remove persons from a secure community transition facility, and
33 contract terminations in determining whether to execute, renew, or
34 renegotiate a contract with a service provider.

35 **Sec. 9.** RCW 9.95.011 and 2001 2nd sp.s. c 12 s 320 are each
36 amended to read as follows:

37 (1) When the court commits a convicted person to the department of
38 corrections on or after July 1, 1986, for an offense committed before

1 July 1, 1984, the court shall, at the time of sentencing or revocation
2 of probation, fix the minimum term. The term so fixed shall not exceed
3 the maximum sentence provided by law for the offense of which the
4 person is convicted.

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

12 Thereafter, the expiration of the minimum term set by the court
13 minus any time credits earned under RCW 9.95.070 and 9.95.110
14 constitutes the parole eligibility review date, at which time the board
15 may consider the convicted person for parole under RCW 9.95.100 and
16 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
17 board's authority to reduce or increase the minimum term, once set by
18 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
19 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

20 (2) Not less than ninety days prior to the expiration of the
21 minimum term of a person sentenced under RCW 9.94A.712, for a sex
22 offense committed on or after (~~July~~) September 1, 2001, less any time
23 credits permitted by statute, the board shall review the person for
24 conditional release to community custody as provided in RCW 9.95.420.
25 If the board does not release the person, it shall set a new minimum
26 term not to exceed an additional two years. The board shall review the
27 person again not less than ninety days prior to the expiration of the
28 new minimum term.

29 **Sec. 10.** RCW 9.95.017 and 2001 2nd sp.s. c 12 s 321 are each
30 amended to read as follows:

31 (1) The board shall cause to be prepared criteria for duration of
32 confinement, release on parole, and length of parole for persons
33 committed to prison for crimes committed before July 1, 1984.

34 The proposed criteria should take into consideration RCW
35 9.95.009(2). Before submission to the governor, the board shall
36 solicit comments and review on their proposed criteria for parole
37 release. (~~These proposed criteria shall be submitted for~~
38 ~~consideration by the 1987 legislature.~~)

1 (2) Persons committed to the department of corrections and who are
2 under the authority of the board for crimes committed on or after
3 ~~((July))~~ September 1, 2001, are subject to the provisions for duration
4 of confinement, release to community custody, and length of community
5 custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and
6 9.95.420 through 9.95.440.

7 **Sec. 11.** RCW 9.95.055 and 2001 2nd sp.s. c 12 s 325 are each
8 amended to read as follows:

9 The indeterminate sentence review board is hereby granted
10 authority, in the event of a declaration by the governor that a war
11 emergency exists, including a general mobilization, and for the
12 duration thereof only, to reduce downward the minimum term, as set by
13 the board, of any inmate under the jurisdiction of the board confined
14 in a state correctional facility, who will be accepted by and inducted
15 into the armed services: PROVIDED, That a reduction downward shall not
16 be made under this section for those inmates who: (1) Are confined for
17 (a) treason, (b) murder in the first degree, or ~~((earnal knowledge of~~
18 a female child under ten years: ~~AND PROVIDED FURTHER, That no such~~
19 inmate shall be released under this section who is)) (c) rape of a
20 child in the first degree where the victim is under ten years of age or
21 an equivalent offense under prior law; (2) are being considered for
22 civil commitment as a sexually violent predator under chapter 71.09
23 RCW; or ~~((was))~~ (3) were sentenced under RCW 9.94A.712 for a crime
24 committed on or after ~~((July))~~ September 1, 2001.

25 **Sec. 12.** RCW 9.95.070 and 2001 2nd sp.s. c 12 s 327 are each
26 amended to read as follows:

27 (1) Every prisoner, convicted of a crime committed before July 1,
28 1984, who has a favorable record of conduct at ~~((the penitentiary or~~
29 ~~the reformatory))~~ a state correctional institution, and who performs in
30 a faithful, diligent, industrious, orderly and peaceable manner the
31 work, duties, and tasks assigned to him or her to the satisfaction of
32 the superintendent of the ~~((penitentiary or reformatory))~~ institution,
33 and in whose behalf the superintendent of the ~~((penitentiary or~~
34 ~~reformatory))~~ institution files a report certifying that his or her
35 conduct and work have been meritorious and recommending allowance of
36 time credits to him or her, shall upon, but not until, the adoption of
37 such recommendation by the indeterminate sentence review board, be

1 allowed time credit reductions from the term of imprisonment fixed by
2 the board.

3 (2) Offenders sentenced under RCW 9.94A.712 for a crime committed
4 on or after ((July)) September 1, 2001, are subject to the earned
5 release provisions for sex offenders established in RCW 9.94A.728.

6 **Sec. 13.** RCW 9.95.110 and 2001 2nd sp.s. c 12 s 331 are each
7 amended to read as follows:

8 (1) The board may permit an offender convicted of a crime committed
9 before July 1, 1984, to leave the buildings and enclosures of a state
10 correctional institution on parole, after such convicted person has
11 served the period of confinement fixed for him or her by the board,
12 less time credits for good behavior and diligence in work: PROVIDED,
13 That in no case shall an inmate be credited with more than one-third of
14 his or her sentence as fixed by the board.

15 The board may establish rules and regulations under which an
16 offender may be allowed to leave the confines of a state correctional
17 institution on parole, and may return such person to the confines of
18 the institution from which he or she was paroled, at its discretion.

19 (2) The board may permit an offender convicted of a crime committed
20 on or after ((July)) September 1, 2001, and sentenced under RCW
21 9.94A.712, to leave a state correctional institution on community
22 custody according to the provisions of RCW 9.94A.712, 9.94A.713,
23 72.09.335, and 9.95.420 through 9.95.440. The person may be returned
24 to the institution following a violation of his or her conditions of
25 release to community custody pursuant to the hearing provisions of RCW
26 9.95.435.

27 **Sec. 14.** RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each
28 amended to read as follows:

29 Whenever the board or a community corrections officer of this state
30 has reason to believe a person convicted of a crime committed before
31 July 1, 1984, has breached a condition of his or her parole or violated
32 the law of any state where he or she may then be or the rules and
33 regulations of the board, any community corrections officer of this
34 state may arrest or cause the arrest and detention and suspension of
35 parole of such convicted person pending a determination by the board
36 whether the parole of such convicted person shall be revoked. All
37 facts and circumstances surrounding the violation by such convicted

1 person shall be reported to the board by the community corrections
2 officer, with recommendations. The board, after consultation with the
3 secretary of corrections, shall make all rules and regulations
4 concerning procedural matters, which shall include the time when state
5 community corrections officers shall file with the board reports
6 required by this section, procedures pertaining thereto and the filing
7 of such information as may be necessary to enable the board to perform
8 its functions under this section. On the basis of the report by the
9 community corrections officer, or at any time upon its own discretion,
10 the board may revise or modify the conditions of parole or order the
11 suspension of parole by the issuance of a written order bearing its
12 seal, which order shall be sufficient warrant for all peace officers to
13 take into custody any convicted person who may be on parole and retain
14 such person in their custody until arrangements can be made by the
15 board for his or her return to a state correctional institution for
16 convicted felons. Any such revision or modification of the conditions
17 of parole or the order suspending parole shall be personally served
18 upon the parolee.

19 Any parolee arrested and detained in physical custody by the
20 authority of a state community corrections officer, or upon the written
21 order of the board, shall not be released from custody on bail or
22 personal recognizance, except upon approval of the board and the
23 issuance by the board of an order of reinstatement on parole on the
24 same or modified conditions of parole.

25 All chiefs of police, marshals of cities and towns, sheriffs of
26 counties, and all police, prison, and peace officers and constables
27 shall execute any such order in the same manner as any ordinary
28 criminal process.

29 Whenever a paroled prisoner is accused of a violation of his or her
30 parole, other than the commission of, and conviction for, a felony or
31 misdemeanor under the laws of this state or the laws of any state where
32 he or she may then be, he or she shall be entitled to a fair and
33 impartial hearing of such charges within thirty days from the time that
34 he or she is served with charges of the violation of conditions of
35 parole after his or her arrest and detention. The hearing shall be
36 held before one or more members of the board at a place or places,
37 within this state, reasonably near the site of the alleged violation or
38 violations of parole.

1 In the event that the board suspends a parole by reason of an
2 alleged parole violation or in the event that a parole is suspended
3 pending the disposition of a new criminal charge, the board shall have
4 the power to nullify the order of suspension and reinstate the
5 individual to parole under previous conditions or any new conditions
6 that the board may determine advisable. Before the board shall nullify
7 an order of suspension and reinstate a parole they shall have
8 determined that the best interests of society and the individual shall
9 best be served by such reinstatement rather than a return to a
10 (~~penal~~) correctional institution.

11 **Sec. 15.** RCW 9.95.435 and 2001 2nd sp.s. c 12 s 309 are each
12 amended to read as follows:

13 (1) If an offender released by the board under RCW 9.95.420
14 violates any condition or requirement of community custody, the board
15 may transfer the offender to a more restrictive confinement status to
16 serve up to the remaining portion of the sentence, less credit for any
17 period actually spent in community custody or in detention awaiting
18 disposition of an alleged violation and subject to the limitations of
19 subsection (2) of this section.

20 (2) Following the hearing specified in subsection (3) of this
21 section, the board may impose sanctions such as work release, home
22 detention with electronic monitoring, work crew, community service,
23 inpatient treatment, daily reporting, curfew, educational or counseling
24 sessions, supervision enhanced through electronic monitoring, or any
25 other sanctions available in the community, or may suspend or revoke
26 the release to community custody whenever an offender released by the
27 board under RCW 9.95.420 violates any condition or requirement of
28 community custody.

29 (3) If an offender released by the board under RCW 9.95.420 is
30 accused of violating any condition or requirement of community custody,
31 he or she is entitled to a hearing before the board or its designee
32 prior to the imposition of sanctions. The hearing shall be considered
33 as offender disciplinary proceedings and shall not be subject to
34 chapter 34.05 RCW. The board shall develop hearing procedures and a
35 structure of graduated sanctions consistent with the hearing procedures
36 and graduated sanctions developed pursuant to RCW 9.94A.737. The board
37 may suspend the offender's release to community custody and confine the
38 offender in a correctional institution owned, operated by, or operated

1 under contract with the state prior to the hearing unless the offender
2 has been arrested and confined for a new criminal offense.

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

5 (a) Hearings shall be conducted by members of the board unless the
6 board enters into an agreement with the department to use the hearing
7 officers established under RCW 9.94A.737;

8 (b) The board shall provide the offender with written notice of the
9 violation, the evidence relied upon, and the reasons the particular
10 sanction was imposed. The notice shall include a statement of the
11 rights specified in this subsection, and the offender's right to file
12 a personal restraint petition under court rules after the final
13 decision of the board;

14 (c) The hearing shall be held unless waived by the offender, and
15 shall be electronically recorded. For offenders not in total
16 confinement, the hearing shall be held within fifteen working days, but
17 not less than twenty-four hours after notice of the violation. For
18 offenders in total confinement, the hearing shall be held within five
19 working days, but not less than twenty-four hours after notice of the
20 violation;

21 (d) The offender shall have the right to: (i) Be present at the
22 hearing; (ii) have the assistance of a person qualified to assist the
23 offender in the hearing, appointed by the hearing examiner if the
24 offender has a language or communications barrier; (iii) testify or
25 remain silent; (iv) call witnesses and present documentary evidence;
26 (v) question witnesses who appear and testify; and (vi) be represented
27 by counsel if revocation of the release to community custody is a
28 possible sanction for the violation; and

29 (e) The sanction shall take effect if affirmed by the hearing
30 examiner.

31 (5) Within seven days after the hearing examiner's decision, the
32 offender may appeal the decision to a panel of three reviewing
33 examiners designated by the chair of the board or by the chair's
34 designee. The sanction shall be reversed or modified if a majority of
35 the panel finds that the sanction was not reasonably related to any of
36 the following: ~~((+i))~~ (a) The crime of conviction; ~~((+ii))~~ (b) the
37 violation committed; ~~((+iii))~~ (c) the offender's risk of reoffending;
38 or ~~((+iv))~~ (d) the safety of the community.

1 (~~(5)~~) (6) For purposes of this section, no finding of a violation
2 of conditions may be based on unconfirmed or unconfirmable allegations.

3 **Sec. 16.** RCW 9.95.440 and 2001 2nd sp.s. c 12 s 310 are each
4 amended to read as follows:

5 In the event the board suspends the release status of an offender
6 released under RCW 9.95.420 by reason of an alleged violation of a
7 condition of release, or pending disposition of a new criminal charge,
8 the board may nullify the suspension order and reinstate release under
9 previous conditions or any new conditions the board determines
10 advisable pursuant to RCW 9.94A.713(5). Before the board may nullify
11 a suspension order and reinstate release, it shall determine that the
12 best interests of society and the offender shall be served by such
13 reinstatement rather than return to confinement.

14 **Sec. 17.** RCW 9A.44.093 and 2001 2nd sp.s. c 12 s 357 are each
15 amended to read as follows:

16 (1) A person is guilty of sexual misconduct with a minor in the
17 first degree when: (a) The person has, or knowingly causes another
18 person under the age of eighteen to have, sexual intercourse with
19 another person who is at least sixteen years old but less than eighteen
20 years old and not married to the perpetrator, if the perpetrator is at
21 least sixty months older than the victim, is in a significant
22 relationship to the victim, and abuses a supervisory position within
23 that relationship in order to engage in or cause another person under
24 the age of eighteen to engage in sexual intercourse with the victim; or
25 (b) the person is a school employee who has, or knowingly causes
26 another person under the age of eighteen to have, sexual intercourse
27 with a registered student of the school who is at least sixteen years
28 old but less than eighteen years old and not married to the employee,
29 if the employee is at least sixty months older than the student.

30 (2) Sexual misconduct with a minor in the first degree is a class
31 C felony.

32 (3) For the purposes of this section, "school employee" means an
33 employee of a common school defined in RCW 28A.150.020, or a grade
34 kindergarten through twelve employee of a private school under chapter
35 28A.195 RCW, who is not enrolled as a student of the common school or
36 private school.

1 **Sec. 18.** RCW 9A.44.096 and 2001 2nd sp.s. c 12 s 358 are each
2 amended to read as follows:

3 (1) A person is guilty of sexual misconduct with a minor in the
4 second degree when: (a) The person has, or knowingly causes another
5 person under the age of eighteen to have, sexual contact with another
6 person who is at least sixteen years old but less than eighteen years
7 old and not married to the perpetrator, if the perpetrator is at least
8 sixty months older than the victim, is in a significant relationship to
9 the victim, and abuses a supervisory position within that relationship
10 in order to engage in or cause another person under the age of eighteen
11 to engage in sexual contact with the victim; or (b) the person is a
12 school employee who has, or knowingly causes another person under the
13 age of eighteen to have, sexual contact with a registered student of
14 the school who is at least sixteen years old but less than eighteen
15 years old and not married to the employee, if the employee is at least
16 sixty months older than the student.

17 (2) Sexual misconduct with a minor in the second degree is a gross
18 misdemeanor.

19 (3) For the purposes of this section, "school employee" means an
20 employee of a common school defined in RCW 28A.150.020, or a grade
21 kindergarten through twelve employee of a private school under chapter
22 28A.195 RCW, who is not enrolled as a student of the common school or
23 private school.

24 **Sec. 19.** RCW 18.155.030 and 2001 2nd sp.s. c 12 s 402 are each
25 amended to read as follows:

26 (1) No person shall represent himself or herself as a certified sex
27 offender treatment provider without first applying for and receiving a
28 certificate pursuant to this chapter.

29 (2) Except as provided under RCW 9.94A.820 and 71.09.350, only a
30 certified sex offender treatment provider may perform or provide the
31 following services:

32 (a) Evaluations conducted for the purposes of and pursuant to RCW
33 9.94A.670 and 13.40.160;

34 (b) Treatment of convicted sex offenders who are sentenced and
35 ordered into treatment pursuant to chapter 9.94A RCW and adjudicated
36 juvenile sex offenders who are ordered into treatment pursuant to
37 chapter 13.40 RCW;

1 (c) (~~Except as provided under subsection (3) of this section,~~)
2 Treatment of sexually violent predators who are conditionally released
3 to a less restrictive alternative pursuant to chapter 71.09 RCW.

4 (3) A certified sex offender treatment provider or a treatment
5 provider authorized under RCW 71.09.350 may not perform or provide
6 treatment of sexually violent predators under subsection (2)(c) of this
7 section if the certified sex offender treatment provider has been:

8 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

9 (b) Convicted in any other jurisdiction of an offense that under
10 the laws of this state would be classified as a sex offense as defined
11 in RCW 9.94A.030; or

12 (c) Suspended or otherwise restricted from practicing any health
13 care profession by competent authority in any state, federal, or
14 foreign jurisdiction.

15 **Sec. 20.** RCW 71.09.270 and 2001 2nd sp.s. c 12 s 210 are each
16 amended to read as follows:

17 The secretary of social and health services shall coordinate with
18 the secretary of corrections and the appropriate local or state law
19 enforcement agency or agencies to establish a twenty-four-hour law
20 enforcement presence on McNeil Island before any person is admitted to
21 the secure community transition facility established under RCW
22 71.09.250(1)(a)(i). Law enforcement shall coordinate with the
23 emergency response team for McNeil Island to provide planning and
24 coordination in the event of an escape from the special commitment
25 center or the secure community transition facility.

26 (~~In addition, or if no law enforcement agency will provide a law~~
27 ~~enforcement presence on the island, not more than ten correctional~~
28 ~~employees, as selected by the secretary of corrections, who are members~~
29 ~~of the emergency response team for the McNeil Island correctional~~
30 ~~facility, shall have the powers and duties of a general authority peace~~
31 ~~officer while acting in a law enforcement capacity. If there is no law~~
32 ~~enforcement agency to provide the law enforcement presence, those~~
33 ~~correctional employees selected as peace officers shall provide a~~
34 ~~twenty-four hour presence and shall not have correctional duties at the~~
35 ~~correctional facility in addition to the emergency response team while~~
36 ~~acting in a law enforcement capacity.))~~)

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 72.09 RCW
2 to read as follows:

3 In addition, or if no law enforcement agency will provide a law
4 enforcement presence on the island, not more than ten correctional
5 employees, as selected by the secretary of corrections, who are members
6 of the emergency response team for the McNeil Island correctional
7 facility, shall have the powers and duties of a general authority peace
8 officer while acting in a law enforcement capacity. If there is no law
9 enforcement agency to provide the law enforcement presence, those
10 correctional employees selected as peace officers shall provide a
11 twenty-four-hour presence and shall not have correctional duties at the
12 correctional facility in addition to the emergency response team while
13 acting in a law enforcement capacity.

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