
SENATE BILL 5487

State of Washington

63rd Legislature

2013 Regular Session

By Senators Kline, Kohl-Welles, and Hargrove

Read first time 01/31/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.501,
2 9.94A.570, and 9.95.435; adding a new section to chapter 9.94A RCW;
3 adding new sections to chapter 9.95 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each amended
6 to read as follows:

7 (1) The department shall supervise the following offenders who are
8 sentenced to probation in superior court, pursuant to RCW 9.92.060,
9 9.95.204, or 9.95.210:

10 (a) Offenders convicted of:

11 (i) Sexual misconduct with a minor second degree;

12 (ii) Custodial sexual misconduct second degree;

13 (iii) Communication with a minor for immoral purposes; and

14 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

15 (b) Offenders who have:

16 (i) A current conviction for a repetitive domestic violence offense
17 where domestic violence has been plead and proven after August 1, 2011;
18 and

1 (ii) A prior conviction for a repetitive domestic violence offense
2 or domestic violence felony offense where domestic violence has been
3 plead and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by the
5 department pursuant to this section shall be placed on community
6 custody.

7 (3) The department shall supervise every felony offender sentenced
8 to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk
9 assessment classifies the offender as one who is at a high risk to
10 reoffend.

11 (4) Notwithstanding any other provision of this section, the
12 department shall supervise an offender sentenced to community custody
13 regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious violent
15 offense and was sentenced to a term of community custody pursuant to
16 RCW 9.94A.701, 9.94A.702, or 9.94A.507;

17 (b) Has been identified by the department as a dangerous mentally
18 ill offender pursuant to RCW 72.09.370;

19 (c) Has an indeterminate sentence and is subject to parole pursuant
20 to RCW 9.95.017;

21 (d) Has a current conviction for violating RCW 9A.44.132(1)
22 (failure to register) and was sentenced to a term of community custody
23 pursuant to RCW 9.94A.701;

24 (e) Has a current conviction for a domestic violence felony offense
25 where domestic violence has been plead and proven after August 1, 2011,
26 and a prior conviction for a repetitive domestic violence offense or
27 domestic violence felony offense where domestic violence has been plead
28 and proven after August 1, 2011;

29 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
30 9.94A.670; (~~(or)~~)

31 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

32 (h) Has been released by the indeterminate sentence review board
33 pursuant to section 4 of this act.

34 (5) The department is not authorized to, and may not, supervise any
35 offender sentenced to a term of community custody or any probationer
36 unless the offender or probationer is one for whom supervision is
37 required under this section or RCW 9.94A.5011.

1 (6) The department shall conduct a risk assessment for every felony
2 offender sentenced to a term of community custody who may be subject to
3 supervision under this section or RCW 9.94A.5011.

4 **Sec. 2.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read
5 as follows:

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

18 ~~((1))~~ (a) In the case of an offender in need of emergency medical
19 treatment; ~~((or (2)))~~

20 (b) For the purpose of commitment to an inpatient treatment
21 facility in the case of an offender convicted of the crime of rape in
22 the first degree; or

23 (c) When authorized under sections 3 and 4 of this act and RCW
24 9.95.435.

25 (2)(a) A persistent offender shall be sentenced under this
26 subsection if the persistent offender does not have: (i) A prior or
27 current conviction for a class A felony, assault in the second degree,
28 or a sex offense; (ii) a federal or out-of-state conviction for an
29 offense that under the laws of this state would be considered a class
30 A felony, assault in the second degree, or a sex offense; (iii) a prior
31 or current conviction with a deadly weapon verdict under RCW 9.94A.825
32 or 9.95.015; (iv) a federal or out-of-state conviction for which the
33 offender would be required to register as a sex offender while residing
34 in the state of conviction; (v) a federal or out-of-state conviction
35 that included a finding, whether as an element of the offense or for
36 the purpose of imposing a sentencing enhancement, that offender was
37 armed with a deadly weapon, with a dangerous weapon, or with a firearm,

1 as those terms are defined in the jurisdiction of conviction; or (vi)
2 a federal or out-of-state conviction for an offense for which the
3 sentencing court imposed a sentence of incarceration, supervision, or
4 probation, or a combination thereof, of ten or more years.

5 (b) Upon a finding that the persistent offender is subject to
6 sentencing under (a) of this subsection, the court shall impose a
7 sentence to a maximum term and a minimum term. The maximum term shall
8 consist of a maximum sentence of life without the possibility of early
9 release. The minimum term shall consist of the greater of fifteen
10 years, the high end of the standard range for the current offense, or
11 an exceptional sentence above the standard range pursuant to RCW
12 9.94A.535. An offender serving a term of confinement under this
13 subsection is not eligible for earned early release or any reduction in
14 the minimum term imposed by the court.

15 (c) When imposing sentence under (b) of this subsection, the court
16 shall, in addition to the other terms of the sentence, sentence the
17 offender to community custody under the supervision of the department
18 and the authority of the board for any period of time the person is
19 released from total confinement. As part of any sentence, the court
20 shall also require the offender to comply with any conditions imposed
21 by the board under chapter 9.95 RCW. After the offender has served the
22 mandatory minimum term in total confinement without reduction, the
23 board shall have the authority to conditionally release the offender
24 pursuant to section 4 of this act.

25 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW
26 to read as follows:

27 The board shall have jurisdiction over any offender in custody who:
28 (1) Was sentenced as a persistent offender prior to the effective date
29 of this section; and (2) does not have: (i) A prior or current
30 conviction for a class A felony, assault in the second degree, or a sex
31 offense; (ii) a federal or out-of-state conviction for an offense that
32 under the laws of this state would be considered a class A felony,
33 assault in the second degree, or a sex offense; (iii) a prior or
34 current conviction with a deadly weapon verdict under RCW 9.94A.825 or
35 9.95.015; (iv) a federal or out-of-state conviction for which the
36 offender would be required to register as a sex offender while residing
37 in the state of conviction; (v) a federal or out-of-state conviction

1 that included a finding, whether as an element of the offense or for
2 the purpose of imposing a sentencing enhancement, that offender was
3 armed with a deadly weapon, with a dangerous weapon, or with a firearm,
4 as those terms are defined in the jurisdiction of conviction; or (vi)
5 a federal or out-of-state conviction for an offense for which the
6 sentencing court imposed a sentence of incarceration, supervision, or
7 probation, or a combination thereof, of ten or more years.
8 Notwithstanding the terms of the judgment and sentence, after such an
9 offender has served fifteen years in total confinement without
10 reduction under sentence as a persistent offender, the board shall have
11 the authority to grant conditional release pursuant to section 4 of
12 this act. The board shall impose conditions of community custody
13 consistent with RCW 9.94A.703. The offender shall be under the
14 supervision of the department and the authority of the board for any
15 period of time the person is released from total confinement before the
16 expiration of the maximum sentence.

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

19 (1) The board shall not release a persistent offender pursuant to
20 section 3 of this act unless in its opinion his or her rehabilitation
21 has been completed and he or she is a fit subject for release. The
22 board shall start with the presumption that the offender is to remain
23 in total confinement for the maximum sentence of life. The offender
24 may file his or her petition in writing with the board anytime after he
25 or she has served the minimal sentence as defined in RCW
26 9.94A.570(2)(b). The offender must prove by clear and convincing
27 evidence that his or her rehabilitation is complete and that he or she
28 is fit for release. The board must then find by clear and convincing
29 evidence that the offender has shown that he or she is completely
30 rehabilitated and is fit for release. The board must document its
31 decision in a report to the secretary. Upon denial of an offender's
32 petition by the board, the offender shall wait a minimum term, as set
33 by the board, to appear in front of the board for a subsequent release
34 hearing. The board shall set a minimum term, not to exceed five years
35 from the date on which the petition was denied, by which the board must
36 schedule a subsequent release hearing. The offender is not required to
37 submit a new petition for subsequent release hearings.

1 (2) Upon receipt of an offender's petition for release under this
2 section, the board shall make all reasonable efforts to notify by any
3 reasonable means any of the offender's victims for those offenses that
4 qualified the offender as a persistent offender. The board shall
5 provide notification to the victim at least thirty days prior to any
6 scheduled release hearing in which the offender's petition shall be
7 heard by the board so that the victim has the opportunity to provide
8 his or her input to the board on the issue of the offender's release.
9 The board shall consider any input provided by the victim regarding the
10 offender's petition.

11 As part of the board's reasonable efforts to notify the victim in
12 writing of the offender's pending petition, the board shall provide
13 notification in writing of the offender's petition to the prosecuting
14 attorney for the county in which the offender was convicted of his or
15 her most recent most serious offense. The board shall provide notice
16 to the prosecuting attorney no later than thirty days prior to any
17 scheduled release hearing by the board.

18 (3) Once the initial petition seeking release under this section
19 has been filed by the offender, the department shall conduct, and the
20 offender shall participate in, an examination of the offender prior to
21 each release hearing. The department shall complete an examination
22 within ninety days of receipt of the offender's petition, or at least
23 ninety days prior to any subsequently scheduled release hearings, and
24 provide the evaluation to the board for review. The board may consider
25 an offender's failure to participate in the examination in its
26 determination as to whether the offender should be released.

27 (4) If conditional release is granted, the board shall retain
28 jurisdiction for the remainder of the offender's life with the power to
29 revoke the conditional release if the offender violates the imposed
30 conditions. An offender released by the board shall be monitored by
31 the department for compliance. The board shall impose the conditions
32 and instructions provided for in RCW 9.94A.704 should the board decide
33 to release the offender. The board shall consider the department's
34 recommendations and may impose conditions in addition to those
35 recommended by the department. The board may impose or modify
36 conditions of community custody following notice to the offender.

37 (5) Whenever the board or a community corrections officer of this
38 state has reason to believe an offender released under subsection (1)

1 of this section has violated a condition of community custody or the
2 laws of this state, any community corrections officer may arrest or
3 cause the arrest and detention of the offender pending a determination
4 by the board whether sanctions should be imposed or the offender's
5 community custody should be revoked. The community corrections officer
6 shall report all facts and circumstances surrounding the alleged
7 violation to the board in a written report to the board, with
8 recommendations.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.95 RCW
10 to read as follows:

11 If conditional release is granted by the board under section 4 of
12 this act, the governor shall have the opportunity to reject the board's
13 decision in writing within sixty days of the board's decision. If the
14 governor rejects the board's decision, the offender's petition for
15 release is denied. If the governor fails to act on the board's
16 decision within sixty days, the offender's petition for release is
17 denied. If the offender's petition for release is denied, the board
18 shall set a new minimum term not to exceed five years from the date on
19 which the petition was denied.

20 **Sec. 6.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read
21 as follows:

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

29 (b) If an offender released by the board under section 4 of this
30 act is alleged to have violated any condition or requirement of
31 community custody, the offender shall be transferred to confinement in
32 a correctional institution owned, operated by, or operated under
33 contract with the state while awaiting the disposition of the hearing
34 specified in subsection (3) of this section.

35 (c) If an offender released by the board under section 4 of this
36 act is alleged to have violated any three conditions or requirements of

1 community custody within a six-month period, the offender shall be
2 transferred to confinement in a correctional institution owned,
3 operated by, or operated under contract with the state while awaiting
4 the disposition of the hearing specified in subsection (3) of this
5 section.

6 (d) If an offender released by the board under section 4 of this
7 act is convicted of any felony offense, that offender shall be
8 transferred to confinement in a correctional institution owned,
9 operated by, or operated under contract with the state while awaiting
10 the disposition of the hearing specified in subsection (3) of this
11 section.

12 (2)(a) Following the hearing specified in subsection (3) of this
13 section, the board may impose sanctions such as work release, home
14 detention with electronic monitoring, work crew, community restitution,
15 inpatient treatment, daily reporting, curfew, educational or counseling
16 sessions, supervision enhanced through electronic monitoring, or any
17 other sanctions available in the community, or may suspend the release
18 and sanction up to sixty days' confinement in a local correctional
19 facility for each violation, or revoke the release to community custody
20 whenever an offender released by the board under RCW 9.95.420 or
21 section 4 of this act violates any condition or requirement of
22 community custody.

23 (b) If the board finds pursuant to the hearing specified in
24 subsection (3) of this section, that an offender released by the board
25 under section 4 of this act violated any condition or requirement of
26 community custody, the board may revoke the offender's conditional
27 release and impose the remaining portion of the offender's life
28 sentence. The offender may repetition the board for conditional
29 release pursuant to section 4 of this act after the offender has served
30 at least five years in total confinement, without reduction, from the
31 date on which the board revoked the offender's conditional release. If
32 the board finds that a violation of a condition or requirement of
33 community custody has been proved by a preponderance of the evidence,
34 but is not sufficient cause for revocation of the offender's release
35 from community custody, the board may, in its discretion, reinstate the
36 offender on community custody. If the board reinstates the offender on
37 community custody, the board may impose upon the offender sanctions

1 listed under (a) of this subsection as well as additional conditions or
2 requirements of community custody.

3 (c) If the board finds pursuant to the hearing specified in
4 subsection (3) of this section, that an offender released by the board
5 under section 4 of this act has violated three conditions or
6 requirements of community custody within a six-month period, the board
7 shall revoke the offender's conditional release and impose the
8 remaining portion of the offender's life sentence. The offender may
9 repetition the board for conditional release pursuant to section 4 of
10 this act after the offender has served at least five years in total
11 confinement, without reduction, from the date on which the board
12 revoked the offender's conditional release.

13 (d) If the board finds pursuant to the hearing specified in
14 subsection (3) of this section, that an offender released by the board
15 under section 4 of this act has been convicted of a most serious
16 offense under RCW 9.94A.030(32), the board shall revoke the offender's
17 conditional release and impose the remaining portion of the offender's
18 life sentence. These offenders shall not be eligible for release. If
19 the board finds that the offender has been convicted of any felony that
20 is not a most serious offense under RCW 9.94A.030(32), the board shall
21 revoke the offender's conditional release and impose the remaining
22 portion of the offender's life sentence. The offender may repetition
23 the board for conditional release pursuant to section 4 of this act
24 after the offender has served at least ten years in total confinement,
25 without reduction, from the date on which the board revoked the
26 offender's conditional release.

27 (3) If an offender released by the board under RCW 9.95.420 or
28 section 4 of this act is accused of violating any condition or
29 requirement of community custody, he or she is entitled to a hearing
30 before the board or a designee of the board prior to the imposition of
31 sanctions. The hearing shall be considered as offender disciplinary
32 proceedings and shall not be subject to chapter 34.05 RCW. The board
33 shall develop hearing procedures and a structure of graduated sanctions
34 consistent with the hearing procedures and graduated sanctions
35 developed pursuant to RCW 9.94A.737. The board may suspend the
36 offender's release to community custody and confine the offender in a
37 correctional institution owned, operated by, or operated under contract

1 with the state prior to the hearing unless the offender has been
2 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 or designees of the
6 board unless the board enters into an agreement with the department to
7 use the hearing officers established under RCW 9.94A.737;

8 (b) The board shall provide the offender with findings and
9 conclusions which include the evidence relied upon, and the reasons the
10 particular sanction was imposed. The board shall notify the offender
11 of the right to appeal the sanction and the right to file a personal
12 restraint petition under court rules after the final decision of the
13 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 thirty days of service of
17 notice of the violation, but not less than twenty-four hours after
18 notice of the violation. For offenders in total confinement, the
19 hearing shall be held within thirty days of service of notice of the
20 violation, but not less than twenty-four hours after notice of the
21 violation. The board or its designee shall make a determination
22 whether probable cause exists to believe the violation or violations
23 occurred. The determination shall be made within forty-eight hours of
24 receipt of the allegation;

25 (d) The offender shall have the right to: (i) Be present at the
26 hearing; (ii) have the assistance of a person qualified to assist the
27 offender in the hearing, appointed by the presiding hearing officer, if
28 the offender has a language or communications barrier; (iii) testify or
29 remain silent; (iv) call witnesses and present documentary evidence;
30 (v) question witnesses who appear and testify; and (vi) be represented
31 by counsel if revocation of the release to community custody upon a
32 finding of violation is a probable sanction for the violation. The
33 board may not revoke the release to community custody of any offender
34 who was not represented by counsel at the hearing, unless the offender
35 has waived the right to counsel; and

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

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

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

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