
SUBSTITUTE SENATE BILL 5839

State of Washington

64th Legislature

2015 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators Darneille, O'Ban, and Kohl-Welles; by request of Department of Corrections)

READ FIRST TIME 02/19/15.

1 AN ACT Relating to technical corrections to processes for persons
2 sentenced for offenses committed prior to reaching eighteen years of
3 age; amending RCW 9.94A.501, 9.94A.533, 9.94A.728, 9.94A.729,
4 10.95.030, 9.94A.730, 10.95.035, and 9.94A.704; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 9.94A.501 and 2013 2nd sp.s. c 35 s 15 are each
8 amended to read as follows:

9 (1) The department shall supervise the following offenders who
10 are sentenced to probation in superior court, pursuant to RCW
11 9.92.060, 9.95.204, or 9.95.210:

12 (a) Offenders convicted of:

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

14 (ii) Custodial sexual misconduct second degree;

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

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

17 (b) Offenders who have:

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

1 (ii) A prior conviction for a repetitive domestic violence
2 offense or domestic violence felony offense where domestic violence
3 has been 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
8 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
9 whose risk assessment classifies the offender as one who is at a high
10 risk to 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
15 violent offense and was sentenced to a term of community custody
16 pursuant to 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
20 pursuant 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
23 custody pursuant to RCW 9.94A.701;

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

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

32 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
33 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
34 (felony DUI), or RCW 46.61.504(6) (felony physical control).

35 (5) The department shall supervise any offender who is released
36 by the indeterminate sentence review board and who was sentenced to
37 community custody or subject to community custody under the terms of
38 release.

39 (6) The department is not authorized to, and may not, supervise
40 any offender sentenced to a term of community custody or any

1 probationer unless the offender or probationer is one for whom
2 supervision is required under this section or RCW 9.94A.5011.

3 ~~((+6+))~~ (7) The department shall conduct a risk assessment for
4 every felony offender sentenced to a term of community custody who
5 may be subject to supervision under this section or RCW 9.94A.5011.

6 **Sec. 2.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

18 (i) Granted an extraordinary medical placement when authorized
19 under RCW 9.94A.728(3); or

20 (ii) Released under the provisions of RCW 9.94A.730;

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

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

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

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

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

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

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

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

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

34 (i) Granted an extraordinary medical placement when authorized
35 under RCW 9.94A.728(3); or

36 (ii) Released under the provisions of RCW 9.94A.730;

37 (f) The deadly weapon enhancements in this section shall apply to
38 all felony crimes except the following: Possession of a machine gun,
39 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and
2 use of a machine gun in a felony;

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

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

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

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

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

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

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

35 (7) An additional two years shall be added to the standard
36 sentence range for vehicular homicide committed while under the
37 influence of intoxicating liquor or any drug as defined by RCW
38 46.61.502 for each prior offense as defined in RCW 46.61.5055. All
39 enhancements under this subsection shall be mandatory, shall be

1 served in total confinement, and shall run consecutively to all other
2 sentencing provisions.

3 (8)(a) The following additional times shall be added to the
4 standard sentence range for felony crimes committed on or after July
5 1, 2006, if the offense was committed with sexual motivation, as that
6 term is defined in RCW 9.94A.030. If the offender is being sentenced
7 for more than one offense, the sexual motivation enhancement must be
8 added to the total period of total confinement for all offenses,
9 regardless of which underlying offense is subject to a sexual
10 motivation enhancement. If the offender committed the offense with
11 sexual motivation and the offender is being sentenced for an
12 anticipatory offense under chapter 9A.28 RCW, the following
13 additional times shall be added to the standard sentence range
14 determined under subsection (2) of this section based on the felony
15 crime of conviction as classified under RCW 9A.28.020:

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

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

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

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

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

37 (i) Granted an extraordinary medical placement when authorized
38 under RCW 9.94A.728(3); or

39 (ii) Released under the provisions of RCW 9.94A.730;

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

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

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

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

16 (9) An additional one-year enhancement shall be added to the
17 standard sentence range for the felony crimes of RCW 9A.44.073,
18 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
19 or after July 22, 2007, if the offender engaged, agreed, or offered
20 to engage the victim in the sexual conduct in return for a fee. If
21 the offender is being sentenced for more than one offense, the
22 one-year enhancement must be added to the total period of total
23 confinement for all offenses, regardless of which underlying offense
24 is subject to the enhancement. If the offender is being sentenced for
25 an anticipatory offense for the felony crimes of RCW 9A.44.073,
26 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
27 offender attempted, solicited another, or conspired to engage, agree,
28 or offer to engage the victim in the sexual conduct in return for a
29 fee, an additional one-year enhancement shall be added to the
30 standard sentence range determined under subsection (2) of this
31 section. For purposes of this subsection, "sexual conduct" means
32 sexual intercourse or sexual contact, both as defined in chapter
33 9A.44 RCW.

34 (10)(a) For a person age eighteen or older convicted of any
35 criminal street gang-related felony offense for which the person
36 compensated, threatened, or solicited a minor in order to involve the
37 minor in the commission of the felony offense, the standard sentence
38 range is determined by locating the sentencing grid sentence range
39 defined by the appropriate offender score and the seriousness level
40 of the completed crime, and multiplying the range by one hundred

1 twenty-five percent. If the standard sentence range under this
2 subsection exceeds the statutory maximum sentence for the offense,
3 the statutory maximum sentence is the presumptive sentence unless the
4 offender is a persistent offender.

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

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

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

17 (12) An additional twelve months shall be added to the standard
18 sentence range for an offense that is also a violation of RCW
19 9.94A.831.

20 (13) An additional twelve months shall be added to the standard
21 sentence range for vehicular homicide committed while under the
22 influence of intoxicating liquor or any drug as defined by RCW
23 46.61.520 or for vehicular assault committed while under the
24 influence of intoxicating liquor or any drug as defined by RCW
25 46.61.522, or for any felony driving under the influence (RCW
26 46.61.502(6)) or felony physical control under the influence (RCW
27 46.61.504(6)) for each child passenger under the age of sixteen who
28 is an occupant in the defendant's vehicle. These enhancements shall
29 be mandatory, shall be served in total confinement, and shall run
30 consecutively to all other sentencing provisions. If the addition of
31 a minor child enhancement increases the sentence so that it would
32 exceed the statutory maximum for the offense, the portion of the
33 sentence representing the enhancement may not be reduced.

34 (14) An additional twelve months shall be added to the standard
35 sentence range for an offense that is also a violation of RCW
36 9.94A.832.

37 **Sec. 3.** RCW 9.94A.728 and 2010 c 224 s 6 are each amended to
38 read as follows:

1 No person serving a sentence imposed pursuant to this chapter and
2 committed to the custody of the department shall leave the confines
3 of the correctional facility or be released prior to the expiration
4 of the sentence except as follows:

5 (1) An offender may earn early release time as authorized by RCW
6 9.94A.729;

7 (2) An offender may leave a correctional facility pursuant to an
8 authorized furlough or leave of absence. In addition, offenders may
9 leave a correctional facility when in the custody of a corrections
10 officer or officers;

11 (3)(a) The secretary may authorize an extraordinary medical
12 placement for an offender when all of the following conditions exist:

13 (i) The offender has a medical condition that is serious and is
14 expected to require costly care or treatment;

15 (ii) The offender poses a low risk to the community because he or
16 she is currently physically incapacitated due to age or the medical
17 condition or is expected to be so at the time of release; and

18 (iii) It is expected that granting the extraordinary medical
19 placement will result in a cost savings to the state.

20 (b) An offender sentenced to death or to life imprisonment
21 without the possibility of release or parole is not eligible for an
22 extraordinary medical placement.

23 (c) The secretary shall require electronic monitoring for all
24 offenders in extraordinary medical placement unless the electronic
25 monitoring equipment interferes with the function of the offender's
26 medical equipment or results in the loss of funding for the
27 offender's medical care, in which case, an alternative type of
28 monitoring shall be utilized. The secretary shall specify who shall
29 provide the monitoring services and the terms under which the
30 monitoring shall be performed.

31 (d) The secretary may revoke an extraordinary medical placement
32 under this subsection at any time.

33 (e) Persistent offenders are not eligible for extraordinary
34 medical placement;

35 (4) The governor, upon recommendation from the clemency and
36 pardons board, may grant an extraordinary release for reasons of
37 serious health problems, senility, advanced age, extraordinary
38 meritorious acts, or other extraordinary circumstances;

39 (5) No more than the final six months of the offender's term of
40 confinement may be served in partial confinement designed to aid the

1 offender in finding work and reestablishing himself or herself in the
2 community or no more than the final twelve months of the offender's
3 term of confinement may be served in partial confinement as part of
4 the parenting program in RCW 9.94A.6551. This is in addition to that
5 period of earned early release time that may be exchanged for partial
6 confinement pursuant to RCW 9.94A.729(5)(d);

7 (6) The governor may pardon any offender;

8 (7) The department may release an offender from confinement any
9 time within ten days before a release date calculated under this
10 section;

11 (8) An offender may leave a correctional facility prior to
12 completion of his or her sentence if the sentence has been reduced as
13 provided in RCW 9.94A.870; (~~and~~)

14 (9) Notwithstanding any other provisions of this section, an
15 offender sentenced for a felony crime listed in RCW 9.94A.540 as
16 subject to a mandatory minimum sentence of total confinement shall
17 not be released from total confinement before the completion of the
18 listed mandatory minimum sentence for that felony crime of conviction
19 unless allowed under RCW 9.94A.540; and

20 (10) Any person convicted of one or more crimes committed prior
21 to the person's eighteenth birthday may be released from confinement
22 pursuant to RCW 9.94A.730.

23 **Sec. 4.** RCW 9.94A.729 and 2014 c 130 s 4 are each amended to
24 read as follows:

25 (1)(a) The term of the sentence of an offender committed to a
26 correctional facility operated by the department may be reduced by
27 earned release time in accordance with procedures that shall be
28 developed and adopted by the correctional agency having jurisdiction
29 in which the offender is confined. The earned release time shall be
30 for good behavior and good performance, as determined by the
31 correctional agency having jurisdiction. The correctional agency
32 shall not credit the offender with earned release credits in advance
33 of the offender actually earning the credits.

34 (b) Any program established pursuant to this section shall allow
35 an offender to earn early release credits for presentence
36 incarceration. If an offender is transferred from a county jail to
37 the department, the administrator of a county jail facility shall
38 certify to the department the amount of time spent in custody at the
39 facility and the number of days of early release credits lost or not

1 earned. The department may approve a jail certification from a
2 correctional agency that calculates early release time based on the
3 actual amount of confinement time served by the offender before
4 sentencing when an erroneous calculation of confinement time served
5 by the offender before sentencing appears on the judgment and
6 sentence. The department must adjust an offender's rate of early
7 release listed on the jail certification to be consistent with the
8 rate applicable to offenders in the department's facilities. However,
9 the department is not authorized to adjust the number of presentence
10 early release days that the jail has certified as lost or not earned.

11 (2) An offender who has been convicted of a felony committed
12 after July 23, 1995, that involves any applicable deadly weapon
13 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not
14 receive any good time credits or earned release time for that portion
15 of his or her sentence that results from any deadly weapon
16 enhancements.

17 (3) An offender may earn early release time as follows:

18 (a) In the case of an offender sentenced pursuant to RCW
19 10.95.030(3) or 10.95.035, the offender may not receive any earned
20 early release time during the minimum term of confinement imposed by
21 the court; for any remaining portion of the sentence served by the
22 offender, the aggregate earned release time may not exceed ten
23 percent of the sentence.

24 (b) In the case of an offender convicted of a serious violent
25 offense, or a sex offense that is a class A felony, committed on or
26 after July 1, 1990, and before July 1, 2003, the aggregate earned
27 release time may not exceed fifteen percent of the sentence.

28 (c) In the case of an offender convicted of a serious violent
29 offense, or a sex offense that is a class A felony, committed on or
30 after July 1, 2003, the aggregate earned release time may not exceed
31 ten percent of the sentence.

32 (d) An offender is qualified to earn up to fifty percent of
33 aggregate earned release time if he or she:

34 (i) Is not classified as an offender who is at a high risk to
35 reoffend as provided in subsection (4) of this section;

36 (ii) Is not confined pursuant to a sentence for:

37 (A) A sex offense;

38 (B) A violent offense;

39 (C) A crime against persons as defined in RCW 9.94A.411;

1 (D) A felony that is domestic violence as defined in RCW
2 10.99.020;

3 (E) A violation of RCW 9A.52.025 (residential burglary);

4 (F) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.401 by manufacture or delivery or possession with
6 intent to deliver methamphetamine; or

7 (G) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.406 (delivery of a controlled substance to a
9 minor);

10 (iii) Has no prior conviction for the offenses listed in (d)(ii)
11 of this subsection;

12 (iv) Participates in programming or activities as directed by the
13 offender's individual reentry plan as provided under RCW 72.09.270 to
14 the extent that such programming or activities are made available by
15 the department; and

16 (v) Has not committed a new felony after July 22, 2007, while
17 under community custody.

18 (e) In no other case shall the aggregate earned release time
19 exceed one-third of the total sentence.

20 (4) The department shall perform a risk assessment of each
21 offender who may qualify for earned early release under subsection
22 (3)(d) of this section utilizing the risk assessment tool recommended
23 by the Washington state institute for public policy. Subsection
24 (3)(d) of this section does not apply to offenders convicted after
25 July 1, 2010.

26 (5)(a) A person who is eligible for earned early release as
27 provided in this section and who will be supervised by the department
28 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
29 community custody in lieu of earned release time;

30 (b) The department shall, as a part of its program for release to
31 the community in lieu of earned release, require the offender to
32 propose a release plan that includes an approved residence and living
33 arrangement. All offenders with community custody terms eligible for
34 release to community custody in lieu of earned release shall provide
35 an approved residence and living arrangement prior to release to the
36 community;

37 (c) The department may deny transfer to community custody in lieu
38 of earned release time if the department determines an offender's
39 release plan, including proposed residence location and living
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the
2 conditions of the sentence, place the offender at risk to reoffend,
3 or present a risk to victim safety or community safety. The
4 department's authority under this section is independent of any
5 court-ordered condition of sentence or statutory provision regarding
6 conditions for community custody;

7 (d) If the department is unable to approve the offender's release
8 plan, the department may do one or more of the following:

9 (i) Transfer an offender to partial confinement in lieu of earned
10 early release for a period not to exceed three months. The three
11 months in partial confinement is in addition to that portion of the
12 offender's term of confinement that may be served in partial
13 confinement as provided in RCW 9.94A.728(5);

14 (ii) Provide rental vouchers to the offender for a period not to
15 exceed three months if rental assistance will result in an approved
16 release plan.

17 A voucher must be provided in conjunction with additional
18 transition support programming or services that enable an offender to
19 participate in services including, but not limited to, substance
20 abuse treatment, mental health treatment, sex offender treatment,
21 educational programming, or employment programming;

22 (e) The department shall maintain a list of housing providers
23 that meets the requirements of RCW 72.09.285. If more than two
24 voucher recipients will be residing per dwelling unit, as defined in
25 RCW 59.18.030, rental vouchers for those recipients may only be paid
26 to a housing provider on the department's list;

27 (f) For each offender who is the recipient of a rental voucher,
28 the department shall gather data as recommended by the Washington
29 state institute for public policy in order to best demonstrate
30 whether rental vouchers are effective in reducing recidivism.

31 (6) An offender serving a term of confinement imposed under RCW
32 9.94A.670(5)(a) is not eligible for earned release credits under this
33 section.

34 **Sec. 5.** RCW 10.95.030 and 2014 c 130 s 9 are each amended to
35 read as follows:

36 (1) Except as provided in subsections (2) and (3) of this
37 section, any person convicted of the crime of aggravated first degree
38 murder shall be sentenced to life imprisonment without possibility of
39 release or parole. A person sentenced to life imprisonment under this

1 section shall not have that sentence suspended, deferred, or commuted
2 by any judicial officer and the indeterminate sentence review board
3 or its successor may not parole such prisoner nor reduce the period
4 of confinement in any manner whatsoever including but not limited to
5 any sort of good-time calculation. The department of social and
6 health services or its successor or any executive official may not
7 permit such prisoner to participate in any sort of release or
8 furlough program.

9 (2) If, pursuant to a special sentencing proceeding held under
10 RCW 10.95.050, the trier of fact finds that there are not sufficient
11 mitigating circumstances to merit leniency, the sentence shall be
12 death. In no case, however, shall a person be sentenced to death if
13 the person had an intellectual disability at the time the crime was
14 committed, under the definition of intellectual disability set forth
15 in (a) of this subsection. A diagnosis of intellectual disability
16 shall be documented by a licensed psychiatrist or licensed
17 psychologist designated by the court, who is an expert in the
18 diagnosis and evaluation of intellectual disabilities. The defense
19 must establish an intellectual disability by a preponderance of the
20 evidence and the court must make a finding as to the existence of an
21 intellectual disability.

22 (a) "Intellectual disability" means the individual has: (i)
23 Significantly subaverage general intellectual functioning; (ii)
24 existing concurrently with deficits in adaptive behavior; and (iii)
25 both significantly subaverage general intellectual functioning and
26 deficits in adaptive behavior were manifested during the
27 developmental period.

28 (b) "General intellectual functioning" means the results obtained
29 by assessment with one or more of the individually administered
30 general intelligence tests developed for the purpose of assessing
31 intellectual functioning.

32 (c) "Significantly subaverage general intellectual functioning"
33 means intelligence quotient seventy or below.

34 (d) "Adaptive behavior" means the effectiveness or degree with
35 which individuals meet the standards of personal independence and
36 social responsibility expected for his or her age.

37 (e) "Developmental period" means the period of time between
38 conception and the eighteenth birthday.

39 (3)(a)(i) Any person convicted of the crime of aggravated first
40 degree murder for an offense committed prior to the person's

1 sixteenth birthday shall be sentenced to a maximum term of life
2 imprisonment and a minimum term of total confinement of twenty-five
3 years.

4 (ii) Any person convicted of the crime of aggravated first degree
5 murder for an offense committed when the person is at least sixteen
6 years old but less than eighteen years old shall be sentenced to a
7 maximum term of life imprisonment and a minimum term of total
8 confinement of no less than twenty-five years. A minimum term of life
9 may be imposed, in which case the person will be ineligible for
10 parole or early release.

11 (b) In setting a minimum term, the court must take into account
12 mitigating factors that account for the diminished culpability of
13 youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012)
14 including, but not limited to, the age of the individual, the youth's
15 childhood and life experience, the degree of responsibility the youth
16 was capable of exercising, and the youth's chances of becoming
17 rehabilitated.

18 (c) A person sentenced under this subsection shall serve the
19 sentence in a facility or institution operated, or utilized under
20 contract, by the state. During the minimum term of total confinement,
21 the person shall not be eligible for community custody, earned
22 release time, furlough, home detention, partial confinement, work
23 crew, work release, or any other form of early release authorized
24 under RCW 9.94A.728, or any other form of authorized leave or absence
25 from the correctional facility while not in the direct custody of a
26 corrections officer. The provisions of this subsection shall not
27 apply: (i) In the case of an offender in need of emergency medical
28 treatment; or (ii) for an extraordinary medical placement when
29 authorized under RCW 9.94A.728(3).

30 (d) Any person sentenced pursuant to this subsection shall be
31 subject to community custody under the supervision of the department
32 of corrections and the authority of the indeterminate sentence review
33 board. As part of any sentence under this subsection, the court shall
34 require the person to comply with any conditions imposed by the
35 board.

36 (e) No later than five years prior to the expiration of the
37 person's minimum term, the department of corrections 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 (f) No later than one hundred eighty days prior to the expiration
4 of the person's minimum term, the department of corrections shall
5 conduct, and the offender shall participate in, an examination of the
6 person, incorporating methodologies that are recognized by experts in
7 the prediction of dangerousness, and including a prediction of the
8 probability that the person will engage in future criminal behavior
9 if released on conditions to be set by the board. The board may
10 consider a person's failure to participate in an evaluation under
11 this subsection in determining whether to release the person. The
12 board shall order the person released, under such affirmative and
13 other conditions as the board determines appropriate, unless the
14 board determines by a preponderance of the evidence that, despite
15 such conditions, it is more likely than not that the person will
16 commit new criminal law violations if released. If the board does not
17 order the person released, the board shall set a new minimum term not
18 to exceed five additional years. The board shall give public safety
19 considerations the highest priority when making all discretionary
20 decisions regarding the ability for release and conditions of
21 release.

22 (g) In a hearing conducted under (f) of this subsection, the
23 board shall provide opportunities for victims and survivors of
24 victims of any crimes for which the offender has been convicted to
25 present statements as set forth in RCW 7.69.032. The procedures for
26 victim and survivor of victim input shall be (~~developed~~) provided
27 by rule. To facilitate victim and survivor of victim involvement,
28 county prosecutor's offices shall ensure that any victim impact
29 statements and known contact information for victims of record and
30 survivors of victims are forwarded as part of the judgment and
31 sentence.

32 (h) An offender released by the board is subject to the
33 supervision of the department of corrections for a period of time to
34 be determined by the board. The department shall monitor the
35 offender's compliance with conditions of community custody imposed by
36 the court(~~(, department,)~~) or board(~~(,)~~) and promptly report any
37 violations to the board. Any violation of conditions of community
38 custody established or modified by the board are subject to the
39 provisions of RCW 9.95.425 through 9.95.440.

1 (i) An offender released or discharged under this section may be
2 returned to the institution at the discretion of the board if the
3 offender is found to have violated a condition of community custody.
4 The offender is entitled to a hearing pursuant to RCW 9.95.435. If
5 the board finds that the offender has committed a violation, the
6 board shall set a new minimum term of incarceration not to exceed
7 five years.

8 **Sec. 6.** RCW 9.94A.730 and 2014 c 130 s 10 are each amended to
9 read as follows:

10 (1) Notwithstanding any other provision of this chapter, any
11 person convicted of one or more crimes committed prior to the
12 person's eighteenth birthday may petition the indeterminate sentence
13 review board for early release after serving no less than twenty
14 years of total confinement, provided the person has not been
15 convicted for any crime committed subsequent to the person's
16 eighteenth birthday, the person has not committed a (~~major~~
17 ~~violation~~) disqualifying serious infraction as defined by the
18 department in the twelve months prior to filing the petition for
19 early release, and the current sentence was not imposed under RCW
20 10.95.030 or 9.94A.507.

21 (2) (~~When an~~) No later than five years prior to the date the
22 offender (~~who~~) will be eligible to petition (~~under this section~~
23 has served fifteen years) for release, the department shall conduct
24 an assessment of the offender and identify programming and services
25 that would be appropriate to prepare the offender for return to the
26 community. To the extent possible, the department shall make
27 programming available as identified by the assessment.

28 (3) No later than one hundred eighty days from receipt of the
29 petition for early release, the department shall conduct, and the
30 offender shall participate in, an examination of the person,
31 incorporating methodologies that are recognized by experts in the
32 prediction of dangerousness, and including a prediction of the
33 probability that the person will engage in future criminal behavior
34 if released on conditions to be set by the board. The board may
35 consider a person's failure to participate in an evaluation under
36 this subsection in determining whether to release the person. The
37 board shall order the person released under such affirmative and
38 other conditions as the board determines appropriate, unless the
39 board determines by a preponderance of the evidence that, despite

1 such conditions, it is more likely than not that the person will
2 commit new criminal law violations if released. The board shall give
3 public safety considerations the highest priority when making all
4 discretionary decisions regarding the ability for release and
5 conditions of release.

6 (4) In a hearing conducted under subsection (3) of this section,
7 the board shall provide opportunities for victims and survivors of
8 victims of any crimes for which the offender has been convicted to
9 present statements as set forth in RCW 7.69.032. The procedures for
10 victim and survivor of victim input shall be (~~developed~~) provided
11 by rule. To facilitate victim and survivor of victim involvement,
12 county prosecutor's offices shall ensure that any victim impact
13 statements and known contact information for victims of record and
14 survivors of victims are forwarded as part of the judgment and
15 sentence.

16 (5) An offender released by the board is subject to the
17 supervision of the department for a period of time to be determined
18 by the board, up to the length of the court-imposed term of
19 incarceration. The department shall monitor the offender's compliance
20 with conditions of community custody imposed by the court(~~(~~
21 ~~department~~~~)~~) or board(~~(~~~~)~~) and promptly report any violations to the
22 board. Any violation of conditions of community custody established
23 or modified by the board are subject to the provisions of RCW
24 9.95.425 through 9.95.440.

25 (6) An offender whose petition for release is denied may file a
26 new petition for release five years from the date of denial or at an
27 earlier date as may be set by the board.

28 (7) An offender released under the provisions of this section may
29 be returned to the institution at the discretion of the board if the
30 offender is found to have violated a condition of community custody.
31 The offender is entitled to a hearing pursuant to RCW 9.95.435. If
32 the board finds that the offender has committed a new violation, the
33 board may return the offender to the institution for up to the
34 remainder of the court-imposed term of incarceration. The offender
35 may file a new petition for release five years from the date of
36 return to the institution or at an earlier date as may be set by the
37 board.

38 **Sec. 7.** RCW 10.95.035 and 2014 c 130 s 11 are each amended to
39 read as follows:

1 (1) A person, who was sentenced prior to June 1, 2014, under this
2 chapter or any prior law, to a term of life without the possibility
3 of parole for an offense committed prior to their eighteenth
4 birthday, shall be returned to the sentencing court or the sentencing
5 court's successor for sentencing consistent with RCW 10.95.030.
6 Release and supervision of a person who receives a minimum term of
7 less than life will be governed by RCW 10.95.030.

8 (2) The court shall provide an opportunity for victims and
9 survivors of victims of any crimes for which the offender has been
10 convicted to present a statement personally or by representation.

11 (3) The court's order setting a minimum term is subject to review
12 to the same extent as a minimum term decision by the parole board
13 before July 1, 1986.

14 (4) A resentencing under this section shall not reopen the
15 defendant's conviction to challenges that would otherwise be barred
16 by RCW 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

17 **Sec. 8.** RCW 9.94A.704 and 2014 c 35 s 1 are each amended to read
18 as follows:

19 (1) Every person who is sentenced to a period of community
20 custody shall report to and be placed under the supervision of the
21 department, subject to RCW 9.94A.501.

22 (2)(a) The department shall assess the offender's risk of
23 reoffense and may establish and modify additional conditions of
24 community custody based upon the risk to community safety.

25 (b) Within the funds available for community custody, the
26 department shall determine conditions on the basis of risk to
27 community safety, and shall supervise offenders during community
28 custody on the basis of risk to community safety and conditions
29 imposed by the court. The secretary shall adopt rules to implement
30 the provisions of this subsection (2)(b).

31 (3) If the offender is supervised by the department, the
32 department shall at a minimum instruct the offender to:

33 (a) Report as directed to a community corrections officer;

34 (b) Remain within prescribed geographical boundaries;

35 (c) Notify the community corrections officer of any change in the
36 offender's address or employment;

37 (d) Pay the supervision fee assessment; and

38 (e) Disclose the fact of supervision to any mental health or
39 chemical dependency treatment provider, as required by RCW 9.94A.722.

1 (4) The department may require the offender to participate in
2 rehabilitative programs, or otherwise perform affirmative conduct,
3 and to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a
5 sex offense, the department may:

6 (a) Require the offender to refrain from direct or indirect
7 contact with the victim of the crime or immediate family member of
8 the victim of the crime. If a victim or an immediate family member of
9 a victim has requested that the offender not contact him or her after
10 notice as provided in RCW 72.09.340, the department shall require the
11 offender to refrain from contact with the requestor. Where the victim
12 is a minor, the parent or guardian of the victim may make a request
13 on the victim's behalf.

14 (b) Impose electronic monitoring. Within the resources made
15 available by the department for this purpose, the department shall
16 carry out any electronic monitoring using the most appropriate
17 technology given the individual circumstances of the offender. As
18 used in this section, "electronic monitoring" means the monitoring of
19 an offender using an electronic offender tracking system including,
20 but not limited to, a system using radio frequency or active or
21 passive global positioning system technology.

22 (6) The department may not impose conditions that are contrary to
23 those ordered by the court and may not contravene or decrease court-
24 imposed conditions.

25 (7)(a) The department shall notify the offender in writing of any
26 additional conditions or modifications.

27 (b) By the close of the next business day after receiving notice
28 of a condition imposed or modified by the department, an offender may
29 request an administrative review under rules adopted by the
30 department. The condition shall remain in effect unless the reviewing
31 officer finds that it is not reasonably related to the crime of
32 conviction, the offender's risk of reoffending, or the safety of the
33 community.

34 (8) The department shall notify the offender in writing upon
35 community custody intake of the department's violation process.

36 (9) The department may require offenders to pay for special
37 services rendered including electronic monitoring, day reporting, and
38 telephone reporting, dependent on the offender's ability to pay. The
39 department may pay for these services for offenders who are not able
40 to pay.

1 (10)(a) When ((a-sex)) an offender ((has been sentenced pursuant
2 to RCW 9.94A.507)) on community custody is under the authority of the
3 board, the department shall assess the offender's risk of recidivism
4 and shall recommend to the board any additional or modified
5 conditions based upon the offender's risk to community safety and may
6 recommend affirmative conduct or electronic monitoring consistent
7 with subsections (4) through (6) of this section.

8 (b) The board may impose conditions in addition to court-ordered
9 conditions. The board must consider and may impose department-
10 recommended conditions. The board must impose a condition requiring
11 the offender to refrain from contact with the victim or immediate
12 family member of the victim as provided in subsection (5)(a) of this
13 section.

14 (c) By the close of the next business day, after receiving notice
15 of a condition imposed by the board or the department, an offender
16 may request an administrative hearing under rules adopted by the
17 board. The condition shall remain in effect unless the hearing
18 examiner finds that it is not reasonably related to any of the
19 following:

- 20 (i) The crime of conviction;
- 21 (ii) The offender's risk of reoffending;
- 22 (iii) The safety of the community.

23 (d) If the department finds that an emergency exists requiring
24 the immediate imposition of additional conditions in order to prevent
25 the offender from committing a crime, the department may impose such
26 conditions. The department may not impose conditions that are
27 contrary to those set by the board or the court and may not
28 contravene or decrease court-imposed or board-imposed conditions.
29 Conditions imposed under this subsection shall take effect
30 immediately after notice to the offender by personal service, but
31 shall not remain in effect longer than seven working days unless
32 approved by the board.

33 (11) In setting, modifying, and enforcing conditions of community
34 custody, the department shall be deemed to be performing a
35 quasi-judicial function.

36 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
37 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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