

SSB 5749 - H COMM AMD

By Committee on Criminal Justice & Corrections

ADOPTED 04/10/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.95.435 and 2002 c 175 s 17 are each amended to read
4 as follows:

5 (1) If an offender released by the board under RCW 9.95.420
6 violates any condition or requirement of community custody, the board
7 may transfer the offender to a more restrictive confinement status to
8 serve up to the remaining portion of the sentence, less credit for any
9 period actually spent in community custody or in detention awaiting
10 disposition of an alleged violation and subject to the limitations of
11 subsection (2) of this section.

12 (2) 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 or revoke
18 the release to community custody whenever an offender released by the
19 board under RCW 9.95.420 violates any condition or requirement of
20 community custody.

21 (3) If an offender released by the board under RCW 9.95.420 is
22 accused of violating any condition or requirement of community custody,
23 he or she is entitled to a hearing before the board or a designee of
24 the board prior to the imposition of sanctions. The hearing shall be
25 considered as offender disciplinary proceedings and shall not be
26 subject to chapter 34.05 RCW. The board shall develop hearing
27 procedures and a structure of graduated sanctions consistent with the
28 hearing procedures and graduated sanctions developed pursuant to RCW
29 9.94A.737. The board may suspend the offender's release to community
30 custody and confine the offender in a correctional institution owned,

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

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

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

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

15 (c) The hearing shall be held unless waived by the offender, and
16 shall be electronically recorded. For offenders not in total
17 confinement, the hearing shall be held within ~~((fifteen working))~~
18 thirty days of service of notice of the violation, but not less than
19 twenty-four hours after notice of the violation. For offenders in
20 total confinement, the hearing shall be held within ~~((five working))~~
21 thirty days of service of notice of the violation, but not less than
22 twenty-four hours after notice of the violation. The board or its
23 designee shall make a determination whether probable cause exists to
24 believe the violation or violations occurred. The determination shall
25 be made within forty-eight hours of receipt of the allegation;

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

1 (e) The sanction shall take effect if affirmed by the hearing
2 examiner.

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

11 ~~((+5+))~~ (6) For purposes of this section, no finding of a violation
12 of conditions may be based on unconfirmed or unconfirmable allegations.

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

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

18 The proposed criteria should take into consideration RCW
19 9.95.009(2). Before submission to the governor, the board shall
20 solicit comments and review on their proposed criteria for parole
21 release. ~~((These proposed criteria shall be submitted for
22 consideration by the 1987 legislature.))~~

23 (2) Persons committed to the department of corrections and who are
24 under the authority of the board for crimes committed on or after
25 ~~((July))~~ September 1, 2001, are subject to the provisions for duration
26 of confinement, release to community custody, and length of community
27 custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and
28 9.95.420 through 9.95.440.

29 **Sec. 3.** RCW 9.95.055 and 2001 2nd sp.s. c 12 s 325 are each
30 amended to read as follows:

31 The indeterminate sentence review board is hereby granted
32 authority, in the event of a declaration by the governor that a war
33 emergency exists, including a general mobilization, and for the
34 duration thereof only, to reduce downward the minimum term, as set by
35 the board, of any inmate under the jurisdiction of the board confined

1 in a state correctional facility, who will be accepted by and inducted
2 into the armed services: PROVIDED, That a reduction downward shall not
3 be made under this section for those inmates who: (1) Are confined for
4 (a) treason((7)); (b) murder in the first degree; or ((~~earnal knowledge~~
5 ~~of a female child under ten years: AND PROVIDED FURTHER, That no such~~
6 ~~inmate shall be released under this section who is)) (c) rape of a~~
7 child in the first degree where the victim is under ten years of age or
8 an equivalent offense under prior law; (2) are being considered for
9 civil commitment as a sexually violent predator under chapter 71.09
10 RCW; or ((~~was~~)) (3) were sentenced under RCW 9.94A.712 for a crime
11 committed on or after ((~~July~~)) September 1, 2001.

12 **Sec. 4.** RCW 9.95.070 and 2001 2nd sp.s. c 12 s 327 are each
13 amended to read as follows:

14 (1) Every prisoner, convicted of a crime committed before July 1,
15 1984, who has a favorable record of conduct at ((~~the penitentiary or~~
16 the reformatory)) a state correctional institution, and who performs in
17 a faithful, diligent, industrious, orderly and peaceable manner the
18 work, duties, and tasks assigned to him or her to the satisfaction of
19 the superintendent of the ((~~penitentiary or reformatory~~)) institution,
20 and in whose behalf the superintendent of the ((~~penitentiary or~~
21 reformatory)) institution files a report certifying that his or her
22 conduct and work have been meritorious and recommending allowance of
23 time credits to him or her, shall upon, but not until, the adoption of
24 such recommendation by the indeterminate sentence review board, be
25 allowed time credit reductions from the term of imprisonment fixed by
26 the board.

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

30 **Sec. 5.** RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each
31 amended to read as follows:

32 Whenever the board or a community corrections officer of this state
33 has reason to believe a person convicted of a crime committed before
34 July 1, 1984, has breached a condition of his or her parole or violated
35 the law of any state where he or she may then be or the rules and

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

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

30 All chiefs of police, marshals of cities and towns, sheriffs of
31 counties, and all police, prison, and peace officers and constables
32 shall execute any such order in the same manner as any ordinary
33 criminal process.

34 Whenever a paroled prisoner is accused of a violation of his or her
35 parole, other than the commission of, and conviction for, a felony or
36 misdemeanor under the laws of this state or the laws of any state where
37 he or she may then be, he or she shall be entitled to a fair and

1 impartial hearing of such charges within thirty days from the time that
2 he or she is served with charges of the violation of conditions of
3 parole after his or her arrest and detention. The hearing shall be
4 held before one or more members of the board at a place or places,
5 within this state, reasonably near the site of the alleged violation or
6 violations of parole.

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

17 **Sec. 6.** RCW 9.95.440 and 2001 2nd sp.s. c 12 s 310 are each
18 amended to read as follows:

19 In the event the board suspends the release status of an offender
20 released under RCW 9.95.420 by reason of an alleged violation of a
21 condition of release, or pending disposition of a new criminal charge,
22 the board may nullify the suspension order and reinstate release under
23 previous conditions or any new conditions the board determines
24 advisable under RCW 9.94A.713(5). Before the board may nullify a
25 suspension order and reinstate release, it shall determine that the
26 best interests of society and the offender shall be served by such
27 reinstatement rather than return to confinement.

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

30 (1) The board may permit an offender convicted of a crime committed
31 before July 1, 1984, to leave the buildings and enclosures of a state
32 correctional institution on parole, after such convicted person has
33 served the period of confinement fixed for him or her by the board,
34 less time credits for good behavior and diligence in work: PROVIDED,

1 That in no case shall an inmate be credited with more than one-third of
2 his or her sentence as fixed by the board.

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

7 (2) The board may permit an offender convicted of a crime committed
8 on or after (~~July~~) September 1, 2001, and sentenced under RCW
9 9.94A.712, to leave a state correctional institution on community
10 custody according to the provisions of RCW 9.94A.712, 9.94A.713,
11 72.09.335, and 9.95.420 through 9.95.440. The person may be returned
12 to the institution following a violation of his or her conditions of
13 release to community custody pursuant to the hearing provisions of RCW
14 9.95.435."

15 Correct the title.

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