
SENATE BILL 5217

State of Washington

58th Legislature

2003 Regular Session

By Senators Stevens and Hargrove

Read first time 01/20/2003. Referred to Committee on Children & Family 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 71.09.250, 71.09.255, 71.09.265, 71.09.275, 71.09.290, 71.09.300,
4 71.09.325, 9.95.017, 9.95.055, 9.95.070, 9.95.110, 9.95.120, 9.95.435,
5 9.95.440, 18.155.030, and 71.09.270; reenacting and amending RCW
6 71.09.020; 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 2002 c 68 s 4 and 2002 c 58 s 2 are each
9 reenacted and 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) "Health care facility" means any hospital, hospice care center,
15 licensed or certified health care facility, health maintenance
16 organization regulated under chapter 48.46 RCW, federally qualified
17 health maintenance organization, federally approved renal dialysis
18 center or facility, or federally approved blood bank.

1 (3) "Health care practitioner" means an individual or firm licensed
2 or certified to engage actively in a regulated health profession.

3 (4) "Health care services" means those services provided by health
4 professionals licensed pursuant to RCW 18.120.020(4).

5 (5) "Health profession" means those licensed or regulated
6 professions set forth in RCW 18.120.020(4).

7 (6) "Less restrictive alternative" means court-ordered treatment in
8 a setting less restrictive than total confinement which satisfies the
9 conditions set forth in RCW 71.09.092.

10 (7) "Likely to engage in predatory acts of sexual violence if not
11 confined in a secure facility" means that the person more probably than
12 not will engage in such acts if released unconditionally from detention
13 on the sexually violent predator petition. Such likelihood must be
14 evidenced by a recent overt act if the person is not totally confined
15 at the time the petition is filed under RCW 71.09.030.

16 (8) "Mental abnormality" means a congenital or acquired condition
17 affecting the emotional or volitional capacity which predisposes the
18 person to the commission of criminal sexual acts in a degree
19 constituting such person a menace to the health and safety of others.

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

24 (10) "Recent overt act" means any act or threat that has either
25 caused harm of a sexually violent nature or creates a reasonable
26 apprehension of such harm in the mind of an objective person who knows
27 of the history and mental condition of the person engaging in the act.

28 (11) "Risk potential activity" or "risk potential facility" means
29 an activity or facility that provides a higher incidence of risk to the
30 public from persons conditionally released from the special commitment
31 center. Risk potential activities and facilities include: Public and
32 private schools, school bus stops, licensed day care and licensed
33 preschool facilities, public parks, publicly dedicated trails, sports
34 fields, playgrounds, recreational and community centers, churches,
35 synagogues, temples, mosques, public libraries, and others identified
36 by the department following the hearings on a potential site required
37 in RCW 71.09.315. For purposes of this chapter, "school bus stops"
38 does not include bus stops established primarily for public transit.

1 (12) "Secretary" means the secretary of social and health services
2 or the secretary's designee.

3 (13) "Secure facility" means a residential facility for persons
4 civilly confined under the provisions of this chapter that includes
5 security measures sufficient to protect the community. Such facilities
6 include total confinement facilities, secure community transition
7 facilities, and any residence used as a court-ordered placement under
8 RCW 71.09.096.

9 (14) "Secure community transition facility" means a residential
10 facility for persons civilly committed and conditionally released to a
11 less restrictive alternative under this chapter. A secure community
12 transition facility has supervision and security, and either provides
13 or ensures the provision of sex offender treatment services. Secure
14 community transition facilities include but are not limited to the
15 (~~facilities~~) facility established pursuant to RCW 71.09.250(1)(a)(i)
16 and any community-based facilities established under this chapter and
17 operated by the secretary or under contract with the secretary.

18 (15) "Sexually violent offense" means an act committed on, before,
19 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
20 rape in the first degree, rape in the second degree by forcible
21 compulsion, rape of a child in the first or second degree, statutory
22 rape in the first or second degree, indecent liberties by forcible
23 compulsion, indecent liberties against a child under age fourteen,
24 incest against a child under age fourteen, or child molestation in the
25 first or second degree; (b) a felony offense in effect at any time
26 prior to July 1, 1990, that is comparable to a sexually violent offense
27 as defined in (a) of this subsection, or any federal or out-of-state
28 conviction for a felony offense that under the laws of this state would
29 be a sexually violent offense as defined in this subsection; (c) an act
30 of murder in the first or second degree, assault in the first or second
31 degree, assault of a child in the first or second degree, kidnapping in
32 the first or second degree, burglary in the first degree, residential
33 burglary, or unlawful imprisonment, which act, either at the time of
34 sentencing for the offense or subsequently during civil commitment
35 proceedings pursuant to this chapter, has been determined beyond a
36 reasonable doubt to have been sexually motivated, as that term is
37 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28

1 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
2 to commit one of the felonies designated in (a), (b), or (c) of this
3 subsection.

4 (16) "Sexually violent predator" means any person who has been
5 convicted of or charged with a crime of sexual violence and who suffers
6 from a mental abnormality or personality disorder which makes the
7 person likely to engage in predatory acts of sexual violence if not
8 confined in a secure facility.

9 (17) "Total confinement facility" means a secure facility that
10 provides supervision and sex offender treatment services in a total
11 confinement setting. Total confinement facilities include the special
12 commitment center and any similar facility designated as a (~~secure~~)
13 total confinement facility by the secretary.

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

16 (1)(a) The secretary is authorized to site, construct, occupy, and
17 operate (i) a secure community transition facility on McNeil Island for
18 persons authorized to petition for a less restrictive alternative under
19 RCW 71.09.090(1) and who are conditionally released; and (ii) a special
20 commitment center on McNeil Island with up to four hundred four beds as
21 a total confinement facility under this chapter, subject to
22 appropriated funding for those purposes. The secure community
23 transition facility shall be authorized for the number of beds needed
24 to ensure compliance with the orders of the superior courts under this
25 chapter and the federal district court for the western district of
26 Washington. The total number of beds in the secure community
27 transition facility shall be limited to twenty-four, consisting of up
28 to fifteen transitional beds (~~shall be limited to fifteen~~) and up to
29 nine pretransitional beds. The residents occupying (~~these~~) the
30 transitional beds shall be the only residents eligible for transitional
31 services occurring in Pierce county. In no event shall more than
32 fifteen residents of the secure community transition facility be
33 participating in off-island transitional, educational, or employment
34 activity at the same time in Pierce county. The department shall
35 provide the Pierce county sheriff, or his or her designee, with a list
36 of the fifteen residents so designated, along with their photographs
37 and physical descriptions, and (~~it~~) the list shall be immediately

1 updated whenever a residential change occurs. The Pierce county
2 sheriff, or his or her designee, shall be provided an opportunity to
3 confirm the residential status of each resident leaving McNeil Island.

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

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

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

15 (c) For purposes of this subsection, "pretransitional beds" means
16 beds for residents whose progress toward a less secure residential
17 environment and transition into more complete community involvement is
18 projected to take substantially longer than a typical resident of the
19 special commitment center.

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

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

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

36 (6) The department must:

37 (a) Identify the minimum and maximum number of secure community
38 transition facility beds in addition to the facility established under

1 subsection (1) of this section that may be necessary for the period of
2 May 2004 through May 2007 and provide notice of these numbers to all
3 counties by August 31, 2001;

4 ~~((In consultation with the joint select committee established~~
5 ~~in section 225, chapter 12, Laws of 2001 2nd sp. sess.,))~~ Develop and
6 publish policy guidelines for the siting and operation of secure
7 community transition facilities ~~((by October 1, 2001));~~ and

8 (c) Provide a status report to the appropriate committees of the
9 legislature by December 1, 2002, on the development of facilities under
10 the incentive program established in RCW 71.09.255. The report shall
11 include a projection of the anticipated number of secure community
12 transition facility beds that will become operational between May 2004
13 and May 2007. If it appears that an insufficient number of beds will
14 be operational, the department's report shall recommend a progression
15 of methods to facilitate siting in counties and cities including, if
16 necessary, preemption of local land use planning process and other
17 laws.

18 (7)(a) The total number of secure community transition facility
19 beds that may be required to be sited in a county between June 26,
20 2001, and June 30, 2008, may be no greater than the total number of
21 persons civilly committed from that county, or detained at the special
22 commitment center under a pending civil commitment petition from that
23 county where a finding of probable cause had been made on April 1,
24 2001. The total number of secure community transition facility beds
25 required to be sited in each county between July 1, 2008, and June 30,
26 2015, may be no greater than the total number of persons civilly
27 committed from that county or detained at the special commitment center
28 under a pending civil commitment petition from that county where a
29 finding of probable cause had been made as of July 1, 2008.

30 (b) Counties and cities that provide secure community transition
31 facility beds above the maximum number that they could be required to
32 site under this subsection are eligible for a bonus grant under the
33 incentive provisions in RCW 71.09.255. The county where the special
34 commitment center is located shall receive this bonus grant for the
35 number of beds in the facility established in subsection (1) of this
36 section in excess of the maximum number established by this subsection.

37 (c) No secure community transition facilities in addition to the
38 one established in subsection (1) of this section may be required to be

1 sited in the county where the special commitment center is located
2 until after June 30, 2008, provided however, that the county and its
3 cities may elect to site additional secure community transition
4 facilities and shall be eligible under the incentive provisions of RCW
5 71.09.255 for any additional facilities meeting the requirements of
6 that section.

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

13 (a) The number and location of existing residential facility beds
14 operated by the department of corrections or the mental health division
15 of the department of social and health services in each jurisdiction in
16 the county; and

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

20 (9)(a) "Equitable distribution" means siting or locating secure
21 community transition facilities in a manner that will not cause a
22 disproportionate grouping of similar facilities either in any one
23 county, or in any one jurisdiction or community within a county, as
24 relevant; and

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

28 **Sec. 3.** RCW 71.09.255 and 2002 c 68 s 8 are each amended to read
29 as follows:

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

34 (2) The incentive grants and payments provided under this section
35 are subject to the following provisions:

36 (a) Counties and the cities within the county must notify each

1 other of siting plans to promote the establishment and equitable
2 distribution of secure community transition facilities;

3 (b) Development regulations, ordinances, plans, laws, and criteria
4 established for siting must be consistent with statutory requirements
5 and (~~rules~~) policies applicable to siting and operating secure
6 community transition facilities;

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

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

9 (3) Any county or city that makes a commitment to initiate the
10 process to site one or more secure community transition facilities by
11 one hundred twenty days after March 21, 2002, shall receive a planning
12 grant as proposed and approved by the department of community, trade,
13 and economic development.

14 (4) Any county or city that has issued all necessary permits by May
15 1, 2003, for one or more secure community transition facilities that
16 comply with the requirements of this section shall receive an incentive
17 grant in the amount of fifty thousand dollars for each bed sited.

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

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

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

31 (8) The funds available to counties and cities under this section
32 are contingent upon funds being appropriated by the legislature.

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

35 (1) The department shall make reasonable efforts to distribute the
36 impact of the employment, education, and social services needs of the
37 residents of the secure community transition facility established

1 pursuant to RCW 71.09.250(1)(a)(i) among the adjoining counties and not
2 to concentrate the residents' use of resources in any one community.
3 The department's efforts to distribute the impact is limited to
4 locations within a reasonable commute.

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

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

12 (1) ~~((By August 1, 2001, the department must provide the~~
13 ~~appropriate committees of the legislature with a transportation plan to~~
14 ~~address the issues of coordinating the movement of residents of the~~
15 ~~secure community transition facility established pursuant to RCW~~
16 ~~71.09.250(1) between McNeil Island and the mainland with the movement~~
17 ~~of others who must use the same docks or equipment within the funds~~
18 ~~appropriated for this purpose.~~

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

24 (a) ~~((The))~~ Separate residents ~~((shall be separated))~~ from minors
25 and vulnerable adults, except vulnerable adults who have been found to
26 be sexually violent predators.

27 (b) ~~((The))~~ Not transport residents ~~((shall not be transported))~~
28 during times when children are normally coming to and from the mainland
29 for school.

30 ~~((3))~~ (2) The department shall designate a separate waiting area
31 at the points of debarkation, and residents shall be required to remain
32 in this area while awaiting transportation.

33 ~~((4))~~ (3) The department shall provide law enforcement agencies
34 in the counties and cities in which residents of the secure community
35 transition facility established pursuant to RCW 71.09.250(1)(a)(i)
36 regularly participate in employment, education, or social services, or

1 through which these persons are regularly transported, with a copy of
2 the court's order of conditional release with respect to these persons.

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

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

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

12 (a) The proximity and response time criteria established under RCW
13 71.09.285;

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

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

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

20 (e) Appropriate permitting for a secure community transition
21 facility must be possible under the zoning code of the local
22 jurisdiction.

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

27 (3) Public safety and security criteria shall include at least the
28 following:

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

31 (b) The distance from, and number of, risk potential activities and
32 facilities, as measured using the (~~rules~~) policies adopted under RCW
33 71.09.285;

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

36 (d) Suitability of the buildings to be used for the secure

1 community transition facility with regard to existing or feasibly
2 modified features; and

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

5 (4) Site characteristics criteria shall include at least the
6 following:

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

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

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

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

14 (5) Program characteristics criteria shall include at least the
15 following:

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

18 (b) Suitability of the location for programming, staffing, and
19 support considerations;

20 (c) Proximity to employment, educational, vocational, and other
21 treatment plan components.

22 (6) For purposes of this section "available" or "availability" of
23 qualified treatment providers includes provider qualifications and
24 willingness to provide services, average commute time, and cost of
25 services.

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

28 ((+1)) Secure community transition facilities shall meet the
29 following minimum staffing requirements:

30 ((+a)) (1) At any time the census of a facility is six or fewer
31 residents, the facility shall maintain a minimum staffing ratio of one
32 staff per resident during normal waking hours and two awake staff per
33 three residents during normal sleeping hours.

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

1 ~~((e))~~ (3) Before being assigned to a facility, all staff shall
2 have training in sex offender issues, self-defense, and crisis
3 deescalation skills in addition to departmental orientation and, as
4 appropriate, management training. All staff with resident treatment or
5 care duties must participate in ongoing in-service training.

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

11 ~~((2) With respect to the facility established pursuant to RCW
12 71.09.250(1), the department shall, no later than December 1, 2001,
13 provide a staffing plan to the appropriate committees of the
14 legislature that will cover the growth of that facility to its full
15 capacity.))~~

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

18 (1) The secretary shall adopt a violation reporting policy for
19 persons conditionally released to less restrictive alternative
20 placements. The policy shall require written documentation by the
21 department and service providers of all violations of conditions set by
22 the department, the department of corrections, or the court and
23 establish criteria for returning a violator to the special commitment
24 center or a secure community transition facility with a higher degree
25 of security. Any conditionally released person who commits a serious
26 violation of conditions shall be returned to the special commitment
27 center, unless arrested by a law enforcement officer, and the court
28 shall be notified immediately and shall initiate proceedings under RCW
29 71.09.098 to revoke or modify the less restrictive alternative
30 placement. Nothing in this section limits the authority of the
31 department to return a person to the special commitment center based on
32 a violation that is not a serious violation as defined in this section.
33 For the purposes of this section, "serious violation" includes but is
34 not limited to:

35 (a) The commission of any criminal offense;

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

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

3 (2) When a person is conditionally released to a less restrictive
4 alternative under this chapter and is under the supervision of the
5 department of corrections, notice of any violation of the person's
6 conditions of release must also be made to the department of
7 corrections.

8 (3) Whenever the secretary contracts with a service provider to
9 operate a secure community transition facility, the contract shall
10 include a requirement that the service provider must report to the
11 department (~~(of social and health services)~~) any known violation of
12 conditions committed by any resident of the secure community transition
13 facility.

14 (4) The secretary shall document in writing all violations,
15 penalties, actions by the department (~~(of social and health services)~~)
16 to remove persons from a secure community transition facility, and
17 contract terminations. The secretary shall compile this information
18 and submit it to the appropriate committees of the legislature on an
19 annual basis. The secretary shall give great weight to a service
20 provider's record of violations, penalties, actions by the department
21 (~~(of social and health services)~~) or the department of corrections to
22 remove persons from a secure community transition facility, and
23 contract terminations in determining whether to execute, renew, or
24 renegotiate a contract with a service provider.

25 **Sec. 9.** RCW 9.95.017 and 2001 2nd sp.s. c 12 s 321 are each
26 amended to read as follows:

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

30 The proposed criteria should take into consideration RCW
31 9.95.009(2). Before submission to the governor, the board shall
32 solicit comments and review on their proposed criteria for parole
33 release. (~~(These proposed criteria shall be submitted for
34 consideration by the 1987 legislature.)~~)

35 (2) Persons committed to the department of corrections and who are
36 under the authority of the board for crimes committed on or after
37 (~~(July)~~) September 1, 2001, are subject to the provisions for duration

1 of confinement, release to community custody, and length of community
2 custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and
3 9.95.420 through 9.95.440.

4 **Sec. 10.** RCW 9.95.055 and 2001 2nd sp.s. c 12 s 325 are each
5 amended to read as follows:

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

22 **Sec. 11.** RCW 9.95.070 and 2001 2nd sp.s. c 12 s 327 are each
23 amended to read as follows:

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

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

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

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

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

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

25 **Sec. 13.** RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each
26 amended to read as follows:

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

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

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

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

28 Whenever a paroled prisoner is accused of a violation of his or her
29 parole, other than the commission of, and conviction for, a felony or
30 misdemeanor under the laws of this state or the laws of any state where
31 he or she may then be, he or she shall be entitled to a fair and
32 impartial hearing of such charges within thirty days from the time that
33 he or she is served with charges of the violation of conditions of
34 parole after his or her arrest and detention. The hearing shall be
35 held before one or more members of the board at a place or places,
36 within this state, reasonably near the site of the alleged violation or
37 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. 14.** RCW 9.95.435 and 2002 c 175 s 17 are each amended to read
12 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 restitution,
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

1 offender in a correctional institution owned, operated by, or operated
2 under contract with the state prior to the hearing unless the offender
3 has been arrested and confined for a new 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 of the board unless the
7 board enters into an agreement with the department to use the hearing
8 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 days, but
18 not less than twenty-four hours after notice of the violation. For
19 offenders in total confinement, the hearing shall be held within five
20 working days, but not less than twenty-four hours after notice of the
21 violation;

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

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

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

1 violation committed; ~~((+iii))~~ (c) the offender's risk of reoffending;
2 or ~~((+iv))~~ (d) the safety of the community.

3 ~~((+5))~~ (6) For purposes of this section, no finding of a violation
4 of conditions may be based on unconfirmed or unconfirmable allegations.

5 **Sec. 15.** RCW 9.95.440 and 2001 2nd sp.s. c 12 s 310 are each
6 amended to read as follows:

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

16 **Sec. 16.** RCW 18.155.030 and 2001 2nd sp.s. c 12 s 402 are each
17 amended to read as follows:

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

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

24 (a) Evaluations conducted for the purposes of and pursuant to RCW
25 9.94A.670 and 13.40.160;

26 (b) Treatment of convicted sex offenders who are sentenced and
27 ordered into treatment pursuant to chapter 9.94A RCW and adjudicated
28 juvenile sex offenders who are ordered into treatment pursuant to
29 chapter 13.40 RCW;

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

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

- 1 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;
- 2 (b) Convicted in any other jurisdiction of an offense that under
3 the laws of this state would be classified as a sex offense as defined
4 in RCW 9.94A.030; or
- 5 (c) Suspended or otherwise restricted from practicing any health
6 care profession by competent authority in any state, federal, or
7 foreign jurisdiction.

8 **Sec. 17.** RCW 71.09.270 and 2001 2nd sp.s. c 12 s 210 are each
9 amended to read as follows:

10 The secretary of social and health services shall coordinate with
11 the secretary of corrections and the appropriate local or state law
12 enforcement agency or agencies to establish a twenty-four-hour law
13 enforcement presence on McNeil Island before any person is admitted to
14 the secure community transition facility established under RCW
15 71.09.250(1)(a)(i). Law enforcement shall coordinate with the
16 emergency response team for McNeil Island to provide planning and
17 coordination in the event of an escape from the special commitment
18 center or the secure community transition facility.

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

30 NEW SECTION. **Sec. 18.** A new section is added to chapter 72.09 RCW
31 to read as follows:

32 If no law enforcement agency will provide a law enforcement
33 presence on the island, not more than ten correctional employees, as
34 selected by the secretary of corrections, who are members of the
35 emergency response team for the McNeil Island correctional facility,
36 shall have the powers and duties of a general authority peace officer

1 while acting in a law enforcement capacity. If there is no law
2 enforcement agency to provide the law enforcement presence, those
3 correctional employees selected as peace officers shall provide a
4 twenty-four-hour presence and shall not have correctional duties at the
5 correctional facility in addition to the emergency response team while
6 acting in a law enforcement capacity.

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