

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5749

Chapter 218, Laws of 2003

58th Legislature
2003 Regular Session

SEX OFFENDERS--HEARINGS

EFFECTIVE DATE: 7/27/03

Passed by the Senate April 21, 2003
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 10, 2003
YEAS 93 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 12, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5749 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 12, 2003 - 3:56 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5749

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Hargrove, Stevens and Rasmussen; by
request of Indeterminate Sentence Review Board)

READ FIRST TIME 02/24/03.

1 AN ACT Relating to hearings concerning violations by sex offenders
2 of postrelease conditions; and amending RCW 9.95.435, 9.95.017,
3 9.95.055, 9.95.070, 9.95.120, 9.95.440, and 9.95.110.

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

5 **Sec. 1.** RCW 9.95.435 and 2002 c 175 s 17 are each amended to read
6 as follows:

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

14 (2) Following the hearing specified in subsection (3) of this
15 section, the board may impose sanctions such as work release, home
16 detention with electronic monitoring, work crew, community restitution,
17 inpatient treatment, daily reporting, curfew, educational or counseling
18 sessions, supervision enhanced through electronic monitoring, or any
19 other sanctions available in the community, or may suspend or revoke

1 the release to community custody whenever an offender released by the
2 board under RCW 9.95.420 violates any condition or requirement of
3 community custody.

4 (3) If an offender released by the board under RCW 9.95.420 is
5 accused of violating any condition or requirement of community custody,
6 he or she is entitled to a hearing before the board or a designee of
7 the board prior to the imposition of sanctions. The hearing shall be
8 considered as offender disciplinary proceedings and shall not be
9 subject to chapter 34.05 RCW. The board shall develop hearing
10 procedures and a structure of graduated sanctions consistent with the
11 hearing procedures and graduated sanctions developed pursuant to RCW
12 9.94A.737. The board may suspend the offender's release to community
13 custody and confine the offender in a correctional institution owned,
14 operated by, or operated under contract with the state prior to the
15 hearing unless the offender has been arrested and confined for a new
16 criminal offense.

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

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

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

28 (c) The hearing shall be held unless waived by the offender, and
29 shall be electronically recorded. For offenders not in total
30 confinement, the hearing shall be held within (~~fifteen working~~)
31 thirty days of service of notice of the violation, but not less than
32 twenty-four hours after notice of the violation. For offenders in
33 total confinement, the hearing shall be held within (~~five working~~)
34 thirty days of service of notice of the violation, but not less than
35 twenty-four hours after notice of the violation. The board or its
36 designee shall make a determination whether probable cause exists to
37 believe the violation or violations occurred. The determination shall
38 be made within forty-eight hours of receipt of the allegation;

1 (d) The offender shall have the right to: (i) Be present at the
2 hearing; (ii) have the assistance of a person qualified to assist the
3 offender in the hearing, appointed by the hearing examiner if the
4 offender has a language or communications barrier; (iii) testify or
5 remain silent; (iv) call witnesses and present documentary evidence;
6 (v) question witnesses who appear and testify; and (vi) be represented
7 by counsel if revocation of the release to community custody upon a
8 finding of violation is a ~~((possible))~~ probable sanction for the
9 violation. The board may not revoke the release to community custody
10 of any offender who was not represented by counsel at the hearing,
11 unless the offender has waived the right to counsel; and

12 (e) The sanction shall take effect if affirmed by the hearing
13 examiner.

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

22 ~~((+5+))~~ (6) For purposes of this section, no finding of a violation
23 of conditions may be based on unconfirmed or unconfirmable allegations.

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

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

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

34 (2) Persons committed to the department of corrections and who are
35 under the authority of the board for crimes committed on or after
36 ~~((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. 3.** 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((7)); (b) murder in the first degree; or ((~~earnal knowledge~~
15 ~~of 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. 4.** 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. 5.** RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each
5 amended to read as follows:

6 Whenever the board or a community corrections officer of this state
7 has reason to believe a person convicted of a crime committed before
8 July 1, 1984, has breached a condition of his or her parole or violated
9 the law of any state where he or she may then be or the rules and
10 regulations of the board, any community corrections officer of this
11 state may arrest or cause the arrest and detention and suspension of
12 parole of such convicted person pending a determination by the board
13 whether the parole of such convicted person shall be revoked. All
14 facts and circumstances surrounding the violation by such convicted
15 person shall be reported to the board by the community corrections
16 officer, with recommendations. The board, after consultation with the
17 secretary of corrections, shall make all rules and regulations
18 concerning procedural matters, which shall include the time when state
19 community corrections officers shall file with the board reports
20 required by this section, procedures pertaining thereto and the filing
21 of such information as may be necessary to enable the board to perform
22 its functions under this section. On the basis of the report by the
23 community corrections officer, or at any time upon its own discretion,
24 the board may revise or modify the conditions of parole or order the
25 suspension of parole by the issuance of a written order bearing its
26 seal, which order shall be sufficient warrant for all peace officers to
27 take into custody any convicted person who may be on parole and retain
28 such person in their custody until arrangements can be made by the
29 board for his or her return to a state correctional institution for
30 convicted felons. Any such revision or modification of the conditions
31 of parole or the order suspending parole shall be personally served
32 upon the parolee.

33 Any parolee arrested and detained in physical custody by the
34 authority of a state community corrections officer, or upon the written
35 order of the board, shall not be released from custody on bail or
36 personal recognizance, except upon approval of the board and the

1 issuance by the board of an order of reinstatement on parole on the
2 same or modified conditions of parole.

3 All chiefs of police, marshals of cities and towns, sheriffs of
4 counties, and all police, prison, and peace officers and constables
5 shall execute any such order in the same manner as any ordinary
6 criminal process.

7 Whenever a paroled prisoner is accused of a violation of his or her
8 parole, other than the commission of, and conviction for, a felony or
9 misdemeanor under the laws of this state or the laws of any state where
10 he or she may then be, he or she shall be entitled to a fair and
11 impartial hearing of such charges within thirty days from the time that
12 he or she is served with charges of the violation of conditions of
13 parole after his or her arrest and detention. The hearing shall be
14 held before one or more members of the board at a place or places,
15 within this state, reasonably near the site of the alleged violation or
16 violations of parole.

17 In the event that the board suspends a parole by reason of an
18 alleged parole violation or in the event that a parole is suspended
19 pending the disposition of a new criminal charge, the board shall have
20 the power to nullify the order of suspension and reinstate the
21 individual to parole under previous conditions or any new conditions
22 that the board may determine advisable. Before the board shall nullify
23 an order of suspension and reinstate a parole they shall have
24 determined that the best interests of society and the individual shall
25 best be served by such reinstatement rather than a return to a
26 (~~penal~~) correctional institution.

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

29 In the event the board suspends the release status of an offender
30 released under RCW 9.95.420 by reason of an alleged violation of a
31 condition of release, or pending disposition of a new criminal charge,
32 the board may nullify the suspension order and reinstate release under
33 previous conditions or any new conditions the board determines
34 advisable under RCW 9.94A.713(5). Before the board may nullify a
35 suspension order and reinstate release, it shall determine that the
36 best interests of society and the offender shall be served by such
37 reinstatement rather than return to confinement.

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

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

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

14 (2) The board may permit an offender convicted of a crime committed
15 on or after ((July)) September 1, 2001, and sentenced under RCW
16 9.94A.712, to leave a state correctional institution on community
17 custody according to the provisions of RCW 9.94A.712, 9.94A.713,
18 72.09.335, and 9.95.420 through 9.95.440. The person may be returned
19 to the institution following a violation of his or her conditions of
20 release to community custody pursuant to the hearing provisions of RCW
21 9.95.435.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 12, 2003.

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