
HOUSE BILL 2407

State of Washington 59th Legislature 2006 Regular Session

By Representatives Lovick, Strow, O'Brien, Ericks, Dunshee, Linville, Grant, Lantz, Kessler, Williams, Blake, Morrell, Rodne, Hunt, Conway, P. Sullivan, Springer, Takko, Kilmer, Fromhold, B. Sullivan, Hunter, Simpson, Green, Miloscia, Sells, Upthegrove, Campbell and Ormsby

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1 AN ACT Relating to electronic monitoring of sex offenders; amending
2 RCW 9.94A.712, 9.94A.712, 72.09.340, and 72.09.340; providing an
3 effective date; providing an expiration date; and declaring an
4 emergency.

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

6 **Sec. 1.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
7 as follows:

8 (1) An offender who is not a persistent offender shall be sentenced
9 under this section if the offender:

10 (a) Is convicted of:

11 (i) Rape in the first degree, rape in the second degree, rape of a
12 child in the first degree, child molestation in the first degree, rape
13 of a child in the second degree, or indecent liberties by forcible
14 compulsion;

15 (ii) Any of the following offenses with a finding of sexual
16 motivation: Murder in the first degree, murder in the second degree,
17 homicide by abuse, kidnapping in the first degree, kidnapping in the
18 second degree, assault in the first degree, assault in the second

1 degree, assault of a child in the first degree, or burglary in the
2 first degree; or

3 (iii) An attempt to commit any crime listed in this subsection
4 (1)(a);
5 committed on or after September 1, 2001; or

6 (b) Has a prior conviction for an offense listed in RCW
7 9.94A.030(33)(b), and is convicted of any sex offense which was
8 committed after September 1, 2001.

9 For purposes of this subsection (1)(b), failure to register is not
10 a sex offense.

11 (2) An offender convicted of rape of a child in the first or second
12 degree or child molestation in the first degree who was seventeen years
13 of age or younger at the time of the offense shall not be sentenced
14 under this section.

15 (3) Upon a finding that the offender is subject to sentencing under
16 this section, the court shall impose a sentence to a maximum term
17 consisting of the statutory maximum sentence for the offense and a
18 minimum term either within the standard sentence range for the offense,
19 or outside the standard sentence range pursuant to RCW 9.94A.535, if
20 the offender is otherwise eligible for such a sentence.

21 (4) A person sentenced under subsection (3) of this section shall
22 serve the sentence in a facility or institution operated, or utilized
23 under contract, by the state.

24 (5) When a court sentences a person to the custody of the
25 department under this section, the court shall, in addition to the
26 other terms of the sentence, sentence the offender to community custody
27 under the supervision of the department and the authority of the board
28 for any period of time the person is released from total confinement
29 before the expiration of the maximum sentence.

30 (6)(a)(i) Unless a condition is waived by the court, the conditions
31 of community custody shall include those provided for in RCW
32 9.94A.700(4). The conditions may also include those provided for in
33 RCW 9.94A.700(5). The court may also order the offender to participate
34 in rehabilitative programs or otherwise perform affirmative conduct
35 reasonably related to the circumstances of the offense, the offender's
36 risk of reoffending, or the safety of the community, and the department
37 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
38 9.95.425, and 9.95.430.

1 (ii) If the offense that caused the offender to be sentenced under
2 this section was an offense listed in subsection (1)(a) of this
3 section, the court shall require as a condition of community custody
4 that the offender submit to electronic monitoring using a global
5 positioning system or similar tracking system. The system must
6 actively monitor, identify, and timely report the offender's location.
7 The court may not waive the condition in this subsection (6)(a)(ii).

8 (iii) If the offense that caused the offender to be sentenced under
9 this section was an offense listed in subsection (1)(a) of this section
10 and the victim of the offense was under eighteen years of age at the
11 time of the offense, the court shall, as a condition of community
12 custody, prohibit the offender from residing in a community protection
13 zone.

14 (b) As part of any sentence under this section, the court shall
15 also require the offender to comply with any conditions imposed by the
16 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

17 **Sec. 2.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
18 as follows:

19 (1) An offender who is not a persistent offender shall be sentenced
20 under this section if the offender:

21 (a) Is convicted of:

22 (i) Rape in the first degree, rape in the second degree, rape of a
23 child in the first degree, child molestation in the first degree, rape
24 of a child in the second degree, or indecent liberties by forcible
25 compulsion;

26 (ii) Any of the following offenses with a finding of sexual
27 motivation: Murder in the first degree, murder in the second degree,
28 homicide by abuse, kidnapping in the first degree, kidnapping in the
29 second degree, assault in the first degree, assault in the second
30 degree, assault of a child in the first degree, or burglary in the
31 first degree; or

32 (iii) An attempt to commit any crime listed in this subsection
33 (1)(a);
34 committed on or after September 1, 2001; or

35 (b) Has a prior conviction for an offense listed in RCW
36 9.94A.030(32)(b), and is convicted of any sex offense which was
37 committed after September 1, 2001.

1 For purposes of this subsection (1)(b), failure to register is not
2 a sex offense.

3 (2) An offender convicted of rape of a child in the first or second
4 degree or child molestation in the first degree who was seventeen years
5 of age or younger at the time of the offense shall not be sentenced
6 under this section.

7 (3) Upon a finding that the offender is subject to sentencing under
8 this section, the court shall impose a sentence to a maximum term
9 consisting of the statutory maximum sentence for the offense and a
10 minimum term either within the standard sentence range for the offense,
11 or outside the standard sentence range pursuant to RCW 9.94A.535, if
12 the offender is otherwise eligible for such a sentence.

13 (4) A person sentenced under subsection (3) of this section shall
14 serve the sentence in a facility or institution operated, or utilized
15 under contract, by the state.

16 (5) When a court sentences a person to the custody of the
17 department under this section, the court shall, in addition to the
18 other terms of the sentence, sentence the offender to community custody
19 under the supervision of the department and the authority of the board
20 for any period of time the person is released from total confinement
21 before the expiration of the maximum sentence.

22 (6)(a)(i) Unless a condition is waived by the court, the conditions
23 of community custody shall include those provided for in RCW
24 9.94A.700(4). The conditions may also include those provided for in
25 RCW 9.94A.700(5). The court may also order the offender to participate
26 in rehabilitative programs or otherwise perform affirmative conduct
27 reasonably related to the circumstances of the offense, the offender's
28 risk of reoffending, or the safety of the community, and the department
29 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
30 9.95.425, and 9.95.430.

31 (ii) If the offense that caused the offender to be sentenced under
32 this section was an offense listed in subsection (1)(a) of this
33 section, the court shall require as a condition of community custody
34 that the offender submit to electronic monitoring using a global
35 positioning system or similar tracking system. The system must
36 actively monitor, identify, and timely report the offender's location.
37 The court may not waive the condition in this subsection (6)(a)(ii).

1 (b) As part of any sentence under this section, the court shall
2 also require the offender to comply with any conditions imposed by the
3 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

4 **Sec. 3.** RCW 72.09.340 and 2005 c 436 s 3 are each amended to read
5 as follows:

6 (1) In making all discretionary decisions regarding release plans
7 for and supervision of sex offenders, the department shall set
8 priorities and make decisions based on an assessment of public safety
9 risks.

10 (2) The department shall, no later than September 1, 1996,
11 implement a policy governing the department's evaluation and approval
12 of release plans for sex offenders. The policy shall include, at a
13 minimum, a formal process by which victims, witnesses, and other
14 interested people may provide information and comments to the
15 department on potential safety risks to specific individuals or classes
16 of individuals posed by a specific sex offender. The department shall
17 make all reasonable efforts to publicize the availability of this
18 process through currently existing mechanisms and shall seek the
19 assistance of courts, prosecutors, law enforcement, and victims'
20 advocacy groups in doing so. Notice of an offender's proposed
21 residence shall be provided to all people registered to receive notice
22 of an offender's release under RCW 9.94A.612(2), except that in no case
23 may this notification requirement be construed to require an extension
24 of an offender's release date.

25 (3)(a) For any offender convicted of a felony sex offense against
26 a minor victim after June 6, 1996, the department shall not approve a
27 residence location if the proposed residence: (i) Includes a minor
28 victim or child of similar age or circumstance as a previous victim who
29 the department determines may be put at substantial risk of harm by the
30 offender's residence in the household; or (ii) is within close
31 proximity of the current residence of a minor victim, unless the
32 whereabouts of the minor victim cannot be determined or unless such a
33 restriction would impede family reunification efforts ordered by the
34 court or directed by the department of social and health services. The
35 department is further authorized to reject a residence location if the
36 proposed residence is within close proximity to schools, child care
37 centers, playgrounds, or other grounds or facilities where children of

1 similar age or circumstance as a previous victim are present who the
2 department determines may be put at substantial risk of harm by the sex
3 offender's residence at that location.

4 (b) In addition, for any offender prohibited from living in a
5 community protection zone under RCW 9.94A.712(6)(a)(ii), the department
6 may not approve a residence location if the proposed residence is in a
7 community protection zone.

8 (4) When the department requires supervised visitation as a term or
9 condition of a sex offender's community placement under RCW
10 9.94A.700(6), the department shall, prior to approving a supervisor,
11 consider the following:

12 (a) The relationships between the proposed supervisor, the
13 offender, and the minor;

14 (b) The proposed supervisor's acknowledgment and understanding of
15 the offender's prior criminal conduct, general knowledge of the
16 dynamics of child sexual abuse, and willingness and ability to protect
17 the minor from the potential risks posed by contact with the offender;
18 and

19 (c) Recommendations made by the department of social and health
20 services about the best interests of the child.

21 (5) If the department is required to electronically monitor an
22 offender convicted of an offense listed in RCW 9.94A.712(1)(a)
23 committed prior to the effective date of this section, or if the
24 department chooses to impose electronic monitoring on such an offender
25 administratively, the department shall electronically monitor the
26 offender utilizing a global positioning system, or similar tracking
27 system, that actively monitors, identifies, and timely reports the
28 offender's location.

29 **Sec. 4.** RCW 72.09.340 and 1996 c 215 s 3 are each amended to read
30 as follows:

31 (1) In making all discretionary decisions regarding release plans
32 for and supervision of sex offenders, the department shall set
33 priorities and make decisions based on an assessment of public safety
34 risks.

35 (2) The department shall, no later than September 1, 1996,
36 implement a policy governing the department's evaluation and approval
37 of release plans for sex offenders. The policy shall include, at a

1 minimum, a formal process by which victims, witnesses, and other
2 interested people may provide information and comments to the
3 department on potential safety risks to specific individuals or classes
4 of individuals posed by a specific sex offender. The department shall
5 make all reasonable efforts to publicize the availability of this
6 process through currently existing mechanisms and shall seek the
7 assistance of courts, prosecutors, law enforcement, and victims'
8 advocacy groups in doing so. Notice of an offender's proposed
9 residence shall be provided to all people registered to receive notice
10 of an offender's release under RCW 9.94A.612(2), except that in no case
11 may this notification requirement be construed to require an extension
12 of an offender's release date.

13 (3) For any offender convicted of a felony sex offense against a
14 minor victim after June 6, 1996, the department shall not approve a
15 residence location if the proposed residence: (a) Includes a minor
16 victim or child of similar age or circumstance as a previous victim who
17 the department determines may be put at substantial risk of harm by the
18 offender's residence in the household; or (b) is within close proximity
19 of the current residence of a minor victim, unless the whereabouts of
20 the minor victim cannot be determined or unless such a restriction
21 would impede family reunification efforts ordered by the court or
22 directed by the department of social and health services. The
23 department is further authorized to reject a residence location if the
24 proposed residence is within close proximity to schools, child care
25 centers, playgrounds, or other grounds or facilities where children of
26 similar age or circumstance as a previous victim are present who the
27 department determines may be put at substantial risk of harm by the sex
28 offender's residence at that location.

29 (4) When the department requires supervised visitation as a term or
30 condition of a sex offender's community placement under RCW
31 9.94A.700(6), the department shall, prior to approving a supervisor,
32 consider the following:

33 (a) The relationships between the proposed supervisor, the
34 offender, and the minor;

35 (b) The proposed supervisor's acknowledgment and understanding of
36 the offender's prior criminal conduct, general knowledge of the
37 dynamics of child sexual abuse, and willingness and ability to protect

1 the minor from the potential risks posed by contact with the offender;
2 and

3 (c) Recommendations made by the department of social and health
4 services about the best interests of the child.

5 (5) If the department is required to electronically monitor an
6 offender convicted of an offense listed in RCW 9.94A.712(1)(a)
7 committed prior to the effective date of this section, or if the
8 department chooses to impose electronic monitoring on such an offender
9 administratively, the department shall electronically monitor the
10 offender utilizing a global positioning system, or similar tracking
11 system, that actively monitors, identifies, and timely reports the
12 offender's location.

13 NEW SECTION. Sec. 5. If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. Sec. 6. (1) Sections 1 and 3 of this act are
18 necessary for the immediate preservation of the public peace, health,
19 or safety, or support of the state government and its existing public
20 institutions, and takes effect immediately.

21 (2) Sections 2 and 4 of this act take effect July 1, 2006.

22 NEW SECTION. Sec. 7. Sections 1 and 3 of this act expire July 1,
23 2006.

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