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SENATE BILL 5236

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline and Kohl-Welles

Read first time 01/18/11. Referred to Committee on Judiciary.

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.570 and  
2 9.95.435; adding a new section to chapter 9.94A RCW; adding a new  
3 section to chapter 9.95 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read  
6 as follows:

7 (1) Notwithstanding the statutory maximum sentence or any other  
8 provision of this chapter and except as provided in subsection (2) of  
9 this section, a persistent offender shall be sentenced to a term of  
10 total confinement for life without the possibility of release or, when  
11 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
12 first degree, sentenced to death. In addition, no offender subject to  
13 this section may be eligible for community custody, earned release  
14 time, furlough, home detention, partial confinement, work crew, work  
15 release, or any other form of release as defined under RCW 9.94A.728  
16 ~~((1),)~~ (2), (3), ~~((4), (6),)~~ (5), (7), and (8), ~~((or (9),))~~ or any  
17 other form of authorized leave from a correctional facility while not  
18 in the direct custody of a corrections officer or officers, except:

1        ~~((1))~~ (a) In the case of an offender in need of emergency medical  
2 treatment; ~~((or (2)))~~

3        (b) For the purpose of commitment to an inpatient treatment  
4 facility in the case of an offender convicted of the crime of rape in  
5 the first degree; or

6        (c) When authorized under sections 2 and 3 of this act and RCW  
7 9.95.435.

8        (2)(a) A persistent offender shall be sentenced under this  
9 subsection if the persistent offender does not have a prior or current  
10 conviction for a class A felony or a sex offense, or a federal or out-  
11 of-state conviction for an offense that under the laws of this state  
12 would be considered a class A felony or a sex offense, or a prior or  
13 current conviction with a deadly weapon verdict under RCW 9.94A.825 or  
14 9.95.015.

15        (b) Upon a finding that the persistent offender is subject to  
16 sentencing under (a) of this subsection, the court shall impose a  
17 sentence to a maximum term and a minimum term. The maximum term shall  
18 consist of a maximum sentence of life without the possibility of early  
19 release. The minimum term shall consist of the greater of fifteen  
20 years, the high end of the standard range for the current offense, or  
21 an exceptional sentence above the standard range pursuant to RCW  
22 9.94A.535. An offender serving a term of confinement under this  
23 subsection is not eligible for earned early release or any reduction in  
24 the minimum term imposed by the court.

25        (c) When imposing sentence under (b) of this subsection, the court  
26 shall, in addition to the other terms of the sentence, sentence the  
27 offender to community custody under the supervision of the department  
28 and the authority of the board for any period of time the person is  
29 released from total confinement. As part of any sentence, the court  
30 shall also require the offender to comply with any conditions imposed  
31 by the board under chapter 9.95 RCW. After the offender has served the  
32 mandatory minimum term in total confinement without reduction, the  
33 board shall have the authority to conditionally release the offender  
34 pursuant to section 3 of this act.

35        NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW  
36 to read as follows:

37        The board shall have jurisdiction over any offender in custody who:

1 (1) Was sentenced as a persistent offender prior to the effective date  
2 of this act; and (2) does not have a conviction for a class A felony or  
3 a sex offense, or a federal or out-of-state conviction for an offense  
4 that under the laws of this state would be considered a class A felony  
5 or a sex offense, or a conviction with a deadly weapon verdict under  
6 RCW 9.94A.825 or 9.95.015. Notwithstanding the terms of the judgment  
7 and sentence, after such an offender has served fifteen years in total  
8 confinement without reduction under sentence as a persistent offender,  
9 the board shall have the authority to grant conditional release  
10 pursuant to section 3 of this act. The board shall impose conditions  
11 of community custody consistent with RCW 9.94A.703. The offender shall  
12 be under the supervision of the department and the authority of the  
13 board for any period of time the person is released from total  
14 confinement before the expiration of the maximum sentence.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.95 RCW  
16 to read as follows:

17 (1) The board shall not release a persistent offender pursuant to  
18 RCW 9.94A.570(2) or section 2 of this act unless in its opinion his or  
19 her rehabilitation has been completed and he or she is a fit subject  
20 for release. The board shall start with the presumption that the  
21 offender is to remain in total confinement for the maximum sentence of  
22 life. The offender must petition the board in writing for release.  
23 The offender must prove by clear and convincing evidence that his or  
24 her rehabilitation is complete and that he or she is fit for release.  
25 The board must then find by clear and convincing evidence that the  
26 offender has shown that he or she is completely rehabilitated and is  
27 fit for release. The board must document its decision in a report to  
28 the secretary. The offender may file his or her petition with the  
29 board anytime after he or she has served the minimal sentence as  
30 defined in RCW 9.94A.570(2)(b). Upon denial of an offender's petition  
31 by the board, the offender must wait a minimum of one year from the  
32 date his or her petition was denied by the board to reapply for release  
33 by the board.

34 (2) If conditional release is granted, the board shall retain  
35 jurisdiction for the remainder of the offender's life with the power to  
36 revoke the conditional release if the offender violates the imposed

1 conditions. An offender released by the board shall be monitored by  
2 the department for compliance.

3 (3) Whenever the board or a community corrections officer of this  
4 state has reason to believe an offender released under subsection (1)  
5 of this section has violated a condition of community custody or the  
6 laws of this state, any community corrections officer may arrest or  
7 cause the arrest and detention of the offender pending a determination  
8 by the board whether sanctions should be imposed or the offender's  
9 community custody should be revoked. The community corrections officer  
10 shall report all facts and circumstances surrounding the alleged  
11 violation to the board in a written report to the board, with  
12 recommendations.

13 **Sec. 4.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read  
14 as follows:

15 (1) If an offender released by the board under RCW 9.95.420 or  
16 section 3 of this act violates any condition or requirement of  
17 community custody, the board may transfer the offender to a more  
18 restrictive confinement status to serve up to the remaining portion of  
19 the sentence, less credit for any period actually spent in community  
20 custody or in detention awaiting disposition of an alleged violation  
21 and subject to the limitations of subsection (2) of this section.

22 (2) Following the hearing specified in subsection (3) of this  
23 section, the board may impose sanctions such as work release, home  
24 detention with electronic monitoring, work crew, community restitution,  
25 inpatient treatment, daily reporting, curfew, educational or counseling  
26 sessions, supervision enhanced through electronic monitoring, or any  
27 other sanctions available in the community, or may suspend the release  
28 and sanction up to sixty days' confinement in a local correctional  
29 facility for each violation, or revoke the release to community custody  
30 whenever an offender released by the board under RCW 9.95.420 or  
31 section 3 of this act violates any condition or requirement of  
32 community custody.

33 (3) If an offender released by the board under RCW 9.95.420 or  
34 section 3 of this act is accused of violating any condition or  
35 requirement of community custody, he or she is entitled to a hearing  
36 before the board or a designee of the board prior to the imposition of  
37 sanctions. The hearing shall be considered as offender disciplinary

1 proceedings and shall not be subject to chapter 34.05 RCW. The board  
2 shall develop hearing procedures and a structure of graduated sanctions  
3 consistent with the hearing procedures and graduated sanctions  
4 developed pursuant to RCW 9.94A.737. The board may suspend the  
5 offender's release to community custody and confine the offender in a  
6 correctional institution owned, operated by, or operated under contract  
7 with the state prior to the hearing unless the offender has been  
8 arrested and confined for a new criminal offense.

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

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

14 (b) The board shall provide the offender with findings and  
15 conclusions which include the evidence relied upon, and the reasons the  
16 particular sanction was imposed. The board shall notify the offender  
17 of the right to appeal the sanction and the right to file a personal  
18 restraint petition under court rules after the final decision of the  
19 board;

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

31 (d) The offender shall have the right to: (i) Be present at the  
32 hearing; (ii) have the assistance of a person qualified to assist the  
33 offender in the hearing, appointed by the presiding hearing officer, if  
34 the offender has a language or communications barrier; (iii) testify or  
35 remain silent; (iv) call witnesses and present documentary evidence;  
36 (v) question witnesses who appear and testify; and (vi) be represented  
37 by counsel if revocation of the release to community custody upon a  
38 finding of violation is a probable sanction for the violation. The

1 board may not revoke the release to community custody of any offender  
2 who was not represented by counsel at the hearing, unless the offender  
3 has waived the right to counsel; and

4 (e) The sanction shall take effect if affirmed by the presiding  
5 hearing officer.

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

14 (6) For purposes of this section, no finding of a violation of  
15 conditions may be based on unconfirmed or unconfirmable allegations.

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