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**HOUSE BILL 1789**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Jinkins, Pettigrew, Frame, Stambaugh, Ortiz-Self, Fitzgibbon, Macri, Ormsby, and Gregerson

AN ACT Relating to rehabilitated offenders; amending RCW 9.95.425, 9.95.430, 9.95.435, 9.95.440, 9.94A.533, and 9.94A.6332; adding a new section to chapter 9.94A RCW; adding a new chapter to Title 9 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  (1) Since the 1980s, the legislature has passed numerous laws increasing terms of confinement for almost all offenders, including: The elimination of parole; increasing statutory sentence ranges; establishing mandatory minimums; and establishing persistent offender laws. Exceptionally long sentences have proved to be especially ineffective at reducing recidivism or improving public safety. Sadly, many persons sentenced to extremely long sentences were young, under the age of thirty, when they were convicted and sentenced. Based on all we now know, and continue to learn, about brain development in youth and their corresponding abilities to make rational decisions and to process and manage emotions and impulses, it is no surprise to learn that many persons serving long sentences are rehabilitated or are able to become rehabilitated; and, further, that among them are those who have made amends with the victims and their families of the crimes they committed many years ago.

(2) While incarceration is a necessary tool to hold individuals accountable for their actions and to enhance public safety, creating the possibility of early release for prisoners encourages rehabilitation and reduces incarceration rates and costs. The legislature intends to provide an opportunity to reclaim the futures of those persons serving long sentences who can demonstrate that they have been rehabilitated, by creating a community review board to engage in an ongoing, robust, and fair review of prisoners serving sentences longer than twenty years. In conducting its review, the community review board will take into account the offense, crime victims, the offender's rehabilitative efforts and changes, and the benefits and risks to the community upon release. Recommendations for early release by the community review board will be submitted to the governor for his or her final determination. The community review board will be composed of a diverse array of experts in order to fully represent the spectrum of views and priorities in the community.

(3) In support of the community review board's work, and in recognition of the legislature's responsibility to establish a fair and just criminal sentencing system, the legislature further intends that an independent review of our criminal sentencing system will be conducted, and intends that this review will result in recommendations regarding changing and improving sentencing laws and practices to address implementation challenges, promote public safety, reduce recidivism, reduce disparity, reduce incarceration rates for low-risk offenders, reduce costs to taxpayers, and promote fairness and equity.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the community review board.

(2) "Community custody" means that portion of an offender's sentence subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions.

(3) "Department" means the department of corrections.

NEW SECTION. **Sec.**  The community review board is created within the office of the governor for the purpose of reviewing incarcerated offenders for possible early release after twenty years of confinement.

NEW SECTION. **Sec.**  The board is empowered to:

(1) Meet at such times and places as necessary under section 7 of this act;

(2) Determine early release dates for offenders in accordance with section 9 of this act;

(3) Impose community custody and release conditions for offenders in accordance with section 9 of this act and RCW 9.95.425 through 9.95.440;

(4) Adopt policies and procedures to facilitate the orderly administration of the board's hearings and business;

(5) Transact business in panels as necessary under section 7 of this act;

(6) Conduct all business mandated by law;

(7) Review and study research literature and issues related to incarceration, reentry, and reintegration of offenders for the purpose of improving the board's decision-making process; and

(8) Carry out any other specified duties and responsibilities.

NEW SECTION. **Sec.**  (1) The board consists of eleven members appointed by the governor. The governor must create a membership that includes a:

(a) Representative of a statewide or local organization representing communities of color or racial equity;

(b) Representative of a statewide organization representing crime victims;

(c) Representative of an association, community organization, or advocacy group with experience or interest in the formerly incarcerated and successful community reentry;

(d) Representative of a faith-based organization with interest in successful community reentry;

(e) Representative of a statewide organization representing criminal defense lawyers;

(f) Law enforcement professional;

(g) Representative of the department;

(h) Representative of a statewide organization representing prosecuting attorneys;

(i) Person with experience and interest in tribal affairs;

(j) Behavioral health professional; and

(k) Community member.

(2) The governor shall appoint one member as the chair of the board.

(3)(a) The governor shall make initial appointments to the board no later than ninety days after the effective date of this section. Initial appointments are for staggered terms from the date of appointment according to the following: Three members have three-year terms; three members have four-year terms; three members have five-year terms; and two members have six-year terms. The governor shall designate the appointees who will serve the staggered terms.

(b) Except for initial appointments under (a) of this subsection, each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms expire on April 15th of the expiration year. Any member may be reappointed for additional terms. Any member of the council may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing is expressly waived in writing by the affected member. In the event of a vacancy due to death, resignation, or removal, or upon the expiration of a term, the governor shall appoint a successor for the remainder of the unexpired term. Vacancies must be filled by the governor within ninety days.

(4) The office of the governor shall provide administrative and staff support for the board. The board may employ a senior administrative officer and other personnel as may be necessary to assist the board in carrying out its duties.

(5) The members of the board and staff assigned to the board shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec.**  (1) The board shall meet at major state correctional institutions at such times as may be necessary for a full and complete study of: The applications for early release under section 9 of this act; supervision of offenders in community custody under the board's authority under section 9 of this act. Other times and places of meetings may also be fixed by the board. The board must meet at least four times during each calendar year.

(2) The superintendents of the different institutions shall provide suitable quarters for the board while in the discharge of their duties.

NEW SECTION. **Sec.**  The board may meet and transact business in panels. Each board panel must consist of at least five members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in the matters. The chair of the board with the consent of a majority of the board may designate any five members to exercise all the powers and duties of the board in connection with any hearing before the board. If the five members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, the hearing must be reheard by the full board. All actions of the full board must be by concurrence of a majority of the sitting board members.

NEW SECTION. **Sec.**  (1) Upon receipt of a petition for early release submitted under section 9 of this act, the board shall provide notice and a copy of the petition to the sentencing court, prosecuting attorney, and crime victim or surviving family member. The board may request the prosecuting attorney to assist in contacting the crime victim or surviving family member. Notice of the early release hearing date must be provided at least ninety days before the early release hearing. If requested in writing by the sentencing court, the prosecuting attorney, or the crime victim or surviving family member, the board shall also provide any assessment, psychological evaluation, institutional behavior record, or other examination of the offender.

(2) For the purpose of review by the board of a petition for early release, it is presumed that none of the records reviewed are exempt from disclosure to the sentencing court, prosecuting attorney, and crime victim or surviving family member, in whole or in part. The board may not claim any exemption from disclosure for the records reviewed for an early release petition.

(3) The board and its subcommittees must provide comprehensive minutes of all related meetings and hearings on a petition for early release. The comprehensive minutes must include, but are not limited to, the board members present, the name of the petitioner seeking review, the purpose and date of the meeting or hearing, a listing of documents reviewed, the names of those who testified, a summary of the discussion, the motions or other actions taken, and the votes of board members by name. For the purposes of this subsection, "action" has the same meaning as in RCW 42.30.020. The comprehensive minutes must be publicly and conspicuously posted on the board's web site within thirty days of the meeting or hearing.

(4) Nothing in this section precludes the board from receiving confidential input from the crime victim or surviving family member.

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

(1) Notwithstanding any other provision of this chapter, any offender convicted of and incarcerated for one or more crimes may petition the community review board for early release after serving no less than twenty years of total confinement, provided the offender has not committed a major violation in the twelve months prior to filing the petition for early release, and the current sentence was not imposed for:

(a) An offense committed before July 1, 1984, where the offender is eligible for review by the indeterminate sentence review board;

(b) An offense where the offender is eligible for review by the indeterminate sentence review board under RCW 9.94A.730;

(c) Aggravated first degree murder under RCW 10.95.030; or

(d) A sex offense, including the offenses imposed under RCW 9.94A.507 or any offense defined as a sex offense in RCW 9.94A.030.

(2) When an offender who will be eligible to petition under this section has served fifteen years, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the offender will engage in future criminal behavior if released on conditions to be set by the community review board. The community review board may consider an offender's failure to participate in an evaluation under this subsection in determining whether to release him or her.

(4) The community review board shall review a petition and conduct a hearing on a petition within twelve months of the filing of the petition, except the governor may extend the deadline in circumstances where the community review board is processing a high number of petitions. After a hearing, the community review board may order the offender released under such affirmative and other conditions as the community review board determines appropriate. When the community review board grants or denies a petition, it shall specify the reasons for the decision. The community review board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release. The community review board shall consider the following additional factors when evaluating an offender for possible early release under this section:

(a) The offense;

(b) The offender's sentence;

(c) Any relevant findings of the sentencing court;

(d) The offender's time served in total confinement;

(e) The offender's criminal history;

(f) The offender's risk assessment scores;

(g) The offender's behavior before and during incarceration including, but not limited to, infraction history, educational history, and work history;

(h) The offender's responsivity to programming;

(i) The offender's acceptance of responsibility, remorse, and atonement;

(j) The offender's personal development and life changes since the offense occurred;

(k) The offender's social and medical history;

(l) Input from the victims;

(m) Input from the prosecutors, defense attorneys, and judges involved in the offender's sentence;

(n) Input from the community including, but not limited to, those who pledge support of the offender, if released;

(o) The resources in the community to facilitate successful reentry, if released; and

(p) Any other relevant factors.

(5) In a hearing conducted under subsection (4) of this section, the community review board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be developed by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence. To facilitate compliance with this section, the community review board shall publish and regularly update a list of current petitions being considered by the community review board.

(6)(a) The governor shall review each decision of the community review board to approve or deny a petition for release under this section. The governor shall consider the factors under subsection (4) of this section. The governor shall issue a decision approving or reversing the community review board's decision within sixty days.

(b) If the governor does not issue a decision within sixty days, the community review board's decision on the petition is deemed approved.

(c) If the governor approves a decision denying release or reverses a decision approving release, the offender is eligible to reapply in accordance with subsection (8) of this section. If the governor reverses a decision denying release, the governor shall establish conditions for release as required by this section.

(d) If the governor approves a decision for release, or a decision is deemed approved in accordance with (b) of this subsection, the decision of the community review board must be filed with the superior court in the county where the last offense took place and a certified copy shall be provided to the department.

(7) When the community review board orders the release of an offender under this section and it is approved under subsection (6)(d) of this section, or when the governor reverses a decision denying release and established conditions for release and community custody, the community review board shall order and the department shall enforce community custody under the supervision of the department for any period of time the person is released from total confinement before the expiration of the original sentence, including total and partial confinement, imposed by the court. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or community review board, and promptly report any violations to the community review board. Any violation of conditions of community custody established or modified by the community review board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(8) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the community review board.

(9) An offender does not have a right to appointed counsel for proceedings under this section.

**Sec.**  RCW 9.95.425 and 2014 c 130 s 5 are each amended to read as follows:

(1) Whenever the board, the community review board, or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420, 10.95.030(3), ((~~or~~)) 9.94A.730, or section 9 of this act has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board or the community review board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board or the community review board, with recommendations.

(2) If the board, the community review board, or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board, the community review board, or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740.

**Sec.**  RCW 9.95.430 and 2014 c 130 s 6 are each amended to read as follows:

Any offender released under RCW 9.95.420, 10.95.030(3), ((~~or~~)) 9.94A.730, or section 9 of this act who is arrested and detained in physical custody by the authority of a community corrections officer, or upon the written order of the board or community review board, shall not be released from custody on bail or personal recognizance, except upon approval of the board or community review board and the issuance by the board or community review board of an order reinstating the offender's release on the same or modified conditions. All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

**Sec.**  RCW 9.95.435 and 2014 c 130 s 7 are each amended to read as follows:

(1) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730, or by the community review board under section 9 of this act violates any condition or requirement of community custody, the board or community review board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board or community review board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730, or by the community review board under section 9 of this act violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730, or by the community review board under section 9 of this act is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the respective board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board and the community review board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board or community review board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

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

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

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

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

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

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

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

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

**Sec.**  RCW 9.95.440 and 2014 c 130 s 8 are each amended to read as follows:

In the event the board or community review board suspends the release status of an offender released under RCW 9.95.420, 10.95.030(3), ((~~or~~)) 9.94A.730, or section 9 of this act by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board or community review board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board or community review board determines advisable under RCW 9.94A.704. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

**Sec.**  RCW 9.94A.533 and 2016 c 203 s 7 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730 or section 9 of this act;

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730 or section 9 of this act;

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730 or section 9 of this act;

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one‑year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one‑year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one‑year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832.

**Sec.**  RCW 9.94A.6332 and 2014 c 130 s 3 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(6) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(7) If the offender was released pursuant to section 9 of this act, any sanctions shall be imposed by the community review board pursuant to RCW 9.95.435.

(8) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

((~~(8)~~)) (9) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, by December 1, 2017, the sentencing guidelines commission shall contract for the services of an external consultant to evaluate the state's sentencing laws and practices. The consultant must have demonstrated experience and knowledge in Washington's sentencing system and other sentencing systems and models in other states and nations. The consultant must have demonstrated experience in conducting significant research studies. The evaluation must include:

(a) An assessment of sentencing complexities in law and in implementation, including an assessment of possible challenges faced by the courts, jails, and the department of corrections;

(b) An assessment of whether the sentencing reform act conforms to its intended purposes, including reducing disparity between similarly situated offenders;

(c) An assessment of the sentencing changes adopted by the legislature since 1981, including frequency, nature, and impact;

(d) An assessment of sentence lengths among different categories of offenders and whether those sentences conform to current research literature on the relationship between sentences lengths and recidivism;

(e) An assessment of the consistent or inconsistent application and impact of sentencing laws on offenders and the community;

(f) An assessment of the state's sentencing laws and practices as compared to other states and other sentencing models including, but not limited to, whether the current sentencing laws and practices promote public safety, fairness, and equity as compared to other models of sentencing;

(g) An assessment of whether the elimination of the parole system and establishment of determinate sentencing is connected to or has resulted in excessive incarceration of low-risk offenders;

(h) Recommendations for changing and improving sentencing laws and practices to address implementation challenges, promote public safety, reduce recidivism, reduce disparity, reduce incarceration rates for low-risk offenders, reduce costs to taxpayers, and promote fairness and equity, including a phased implementation plan for possible retroactive and prospective changes; and

(i) Recommendations for establishing an ongoing review of sentencing laws and practices.

(2) The consultant shall complete its evaluation and submit a report to the commission, the appropriate committees of the legislature, and the governor by September 1, 2018. The contract for services must include a requirement for two briefings before the legislature, one in the house of representatives and one in the senate, in the 2019 regular legislative session.

NEW SECTION. **Sec.**  This act applies retroactively to persons incarcerated on the effective date of this section, regardless of the date of the offense or conviction.

NEW SECTION. **Sec.**  This act does not create any right or entitlement to release from incarceration before the end of a term of incarceration imposed by the court.

NEW SECTION. **Sec.**  Sections 2 through 8 of this act constitute a new chapter in Title 9 RCW.

**--- END ---**