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**HOUSE BILL 2303**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Goodman, Simmons, and Peterson

AN ACT Relating to modification of conditions of community custody; amending RCW 9.94A.704, 9.94A.709, 9.94A.730, 9.95.420, 9.95.435, and 10.73.100; reenacting and amending RCW 10.95.030; creating a new section; and declaring an emergency.

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

**Sec.**  RCW 9.94A.704 and 2022 c 29 s 9 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the offender's crime of conviction, risk of reoffense, or risk to community safety. Regardless of the offender's date of sentencing, the additional conditions of community custody need not be crime-related if the conditions relate to either the risk of reoffense or risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions ((~~on the basis of risk to community safety~~)) as provided for in this section, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment; and

(d) Disclose the fact of supervision to any mental health, chemical dependency, or domestic violence treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense or domestic violence, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf. This subsection is not intended to reduce the preexisting authority of the department to impose no-contact conditions regardless of the offender's crime and regardless of who is protected by the no-contact condition, where such condition is based on risk to community safety.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect ((~~unless~~)) if the reviewing officer finds that it is ((~~not~~)) reasonably related to ((~~the~~)) at least one of the following: The crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When an offender on community custody is under the authority of the board, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's crime of conviction, risk of reoffense, or risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose or modify conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section. Regardless of the offender's date of sentencing, additional conditions imposed or modified by the board may be based upon the offender's crime of conviction, risk of reoffense, or risk to community safety. The additional conditions of community custody need not be crime-related if the conditions relate to either the risk of reoffense or risk to community safety.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect ((~~unless~~)) if the hearing examiner finds that it is ((~~not~~)) reasonably related to ((~~any~~)) at least one of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community; or

(iv) The offender's risk of domestic violence reoffense.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(e) The board shall notify the offender in writing of any additional or modified conditions.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi‑judicial function.

(12) On the motion of the defendant the court may amend the substantive conditions of community custody set by the department if the court determines that there is no substantial risk to community safety. The time limit for collateral attacks established under RCW 10.73.090 does not apply to any motion filed pursuant to this subsection.

**Sec.**  RCW 9.94A.709 and 2008 c 231 s 14 are each amended to read as follows:

(1) At any time prior to the completion or termination of ((~~a sex~~)) an offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions of community custody for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody.

(2) On the motion of the defendant at any time prior to the completion or termination of an offender's term of community custody, if the court determines that there is no substantial risk to public safety, the court may amend the substantive conditions of community custody. The time limit for collateral attacks established under RCW 10.73.090 does not apply to any motion filed pursuant to this subsection.

(3) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

((~~(3)~~)) (4) If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

**Sec.**  RCW 9.94A.730 and 2015 c 134 s 6 are each amended to read as follows:

(1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's ((~~eighteenth~~)) 18th birthday may petition the indeterminate sentence review board for early release after serving no less than ((~~twenty~~)) 20 years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's ((~~eighteenth~~)) 18th birthday, the person has not committed a disqualifying serious infraction as defined by the department in the ((~~twelve~~)) 12 months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

(2) No later than five years prior to the date the offender will be eligible to petition for release, 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~~)) 180 days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(4) In a hearing conducted under subsection (3) of this section, the 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 provided 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.

(5) Any person released by the board pursuant to this section shall comply with conditions imposed or modified pursuant to RCW 9.94A.704(10), in addition to court-imposed conditions.

(6) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board, up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

((~~(6)~~)) (7) 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 board.

((~~(7)~~)) (8) An offender released under the provisions of this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation, the board may return the offender to the institution for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to the institution or at an earlier date as may be set by the board.

**Sec.**  RCW 9.95.420 and 2009 c 138 s 3 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, 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 sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within ((~~one hundred twenty~~)) 120 days of the sentencing hearing, the department shall conduct, within ((~~ninety~~)) 90 days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.704. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender. The additional conditions may be based upon the crime of conviction, risk of reoffense, or risk to community safety. The additional conditions of community custody need not be crime-related if the conditions relate to either the risk of reoffense or risk to community safety.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within ((~~one hundred twenty~~)) 120 days of the offender's arrival at a department of correction's facility, then no later than ((~~one hundred twenty~~)) 120 days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the 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 input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.

**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)~~)) (2), or 9.94A.730 violates any condition or requirement of community custody, the 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 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)~~)) (2), or 9.94A.730 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)~~)) (2), or 9.94A.730 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the 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 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 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 enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The 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 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~~)) 30 days of service of notice of the violation, but not less than ((~~twenty-four~~)) 24 hours after notice of the violation. For offenders in total confinement, the hearing shall be held within ((~~thirty~~)) 30 days of service of notice of the violation, but not less than ((~~twenty-four~~)) 24 hours after notice of the violation. The 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~~)) 48 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 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 to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to ((~~any~~)) at least one 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 10.95.030 and 2023 c 102 s 23 and 2023 c 102 s 20 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good‑time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2)(a)(i) Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's ((~~sixteenth~~)) 16th birthday shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of ((~~twenty-five~~)) 25 years.

(ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least ((~~sixteen~~)) 16 years old but less than ((~~eighteen~~)) 18 years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than ((~~twenty-five~~)) 25 years.

(b) In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.

(c) A person sentenced under this subsection shall serve the sentence in a facility or institution operated, or utilized under contract, by the state. During the minimum term of total confinement, the person shall not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (i) In the case of an offender in need of emergency medical treatment; or (ii) for an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

(d) Any person sentenced pursuant to this subsection shall be subject to community custody under the supervision of the department of corrections and the authority of the indeterminate sentence review board. As part of any sentence under this subsection, the court shall require the person to comply with any conditions imposed by the board.

(e) Any person sentenced pursuant to this subsection shall comply with conditions imposed or modified pursuant to RCW 9.94A.704(10), in addition to court-imposed conditions.

(f) No later than five years prior to the expiration of the person's minimum term, the department of corrections 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.

((~~(f)~~)) (g) No later than ((~~one hundred eighty~~)) 180 days prior to the expiration of the person's minimum term, the department of corrections shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. If the board does not order the person released, the board shall set a new minimum term not to exceed five additional years. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

((~~(g)~~)) (h) In a hearing conducted under ((~~(f)~~)) (g) of this subsection, the 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 provided 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.

((~~(h)~~)) (i) An offender released by the board is subject to the supervision of the department of corrections for a period of time to be determined by the board. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

((~~(i)~~)) (j) An offender released or discharged under this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. The board shall set a new minimum term of incarceration not to exceed five years.

**Sec.**  RCW 10.73.100 and 1989 c 395 s 2 are each amended to read as follows:

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant ((~~pled~~)) pleaded not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; ((~~or~~))

(6) A defendant's motion for a modification of conditions of community custody pursuant to RCW 9.94A.704 and 9.94A.709; or

(7) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

NEW SECTION. **Sec.**  This act applies to all offenders sentenced to a term of community custody before, on, or after the effective date of this section.

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**