

SB 6290 - S AMD 716

By Senators Stevens, Hargrove

ADOPTED 03/03/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.501 and 2003 c 379 s 3 are each amended to read
4 as follows:

5 (1) When the department performs a risk assessment pursuant to RCW
6 9.94A.500, or to determine a person's conditions of supervision, the
7 risk assessment shall classify the offender or probationer into one of
8 at least four risk categories.

9 (2) The department shall supervise every offender sentenced to a
10 term of community custody, community placement, or community
11 supervision and every misdemeanor and gross misdemeanor probationer
12 ordered to probation under the supervision of the department pursuant
13 to RCW 9.92.060, 9.95.204, or 9.95.210:

14 (a) Whose risk assessment places that offender or probationer in
15 one of the two highest risk categories; or

16 (b) Regardless of the offender's or probationer's risk category if:

17 (i) The offender's or probationer's current conviction is for:

18 (A) A sex offense;

19 (B) A violent offense;

20 (C) A crime against persons as defined in RCW 9.94A.411;

21 (D) A felony that is domestic violence as defined in RCW 10.99.020;

22 (E) A violation of RCW 9A.52.025 (residential burglary);

23 (F) A violation of, or an attempt, solicitation, or conspiracy to
24 violate, RCW 69.50.401 by manufacture or delivery or possession with
25 intent to deliver methamphetamine; or

26 (G) A violation of, or an attempt, solicitation, or conspiracy to
27 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

28 (ii) The offender or probationer has a prior conviction for:

29 (A) A sex offense;

30 (B) A violent offense;

1 (C) A crime against persons as defined in RCW 9.94A.411;

2 (D) A felony that is domestic violence as defined in RCW 10.99.020;

3 (E) A violation of RCW 9A.52.025 (residential burglary);

4 (F) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.401 by manufacture or delivery or possession with
6 intent to deliver methamphetamine; or

7 (G) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

9 (iii) The conditions of the offender's community custody, community
10 placement, or community supervision or the probationer's supervision
11 include chemical dependency treatment;

12 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
13 or

14 (v) The offender is subject to supervision pursuant to RCW
15 9.94A.745.

16 (3) The department is not authorized to, and may not, supervise any
17 offender sentenced to a term of community custody, community placement,
18 or community supervision or any probationer unless the offender or
19 probationer is one for whom supervision is required under subsection
20 (2) of this section.

21 (4) This section expires July 1, 2010.

22 **Sec. 2.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read
23 as follows:

24 (1) Whenever any person is convicted of any crime except murder,
25 burglary in the first degree, arson in the first degree, robbery, rape
26 of a child, or rape, the superior court may, in its discretion, at the
27 time of imposing sentence upon such person, direct that such sentence
28 be stayed and suspended until otherwise ordered by the superior court,
29 and that the sentenced person be placed under the charge of a community
30 corrections officer employed by the department of corrections, or if
31 the county elects to assume responsibility for the supervision of all
32 superior court misdemeanor probationers a probation officer employed
33 or contracted for by the county, upon such terms as the superior court
34 may determine.

35 (2) As a condition to suspension of sentence, the superior court
36 shall require the payment of the penalty assessment required by RCW

1 7.68.035. In addition, the superior court may require the convicted
2 person to make such monetary payments, on such terms as the superior
3 court deems appropriate under the circumstances, as are necessary: (a)
4 To comply with any order of the court for the payment of family
5 support; (b) to make restitution to any person or persons who may have
6 suffered loss or damage by reason of the commission of the crime in
7 question or when the offender pleads guilty to a lesser offense or
8 fewer offenses and agrees with the prosecutor's recommendation that the
9 offender be required to pay restitution to a victim of an offense or
10 offenses which are not prosecuted pursuant to a plea agreement; (c) to
11 pay any fine imposed and not suspended and the court or other costs
12 incurred in the prosecution of the case, including reimbursement of the
13 state for costs of extradition if return to this state by extradition
14 was required; and (d) to contribute to a county or interlocal drug
15 fund.

16 (3) As a condition of the suspended sentence, the superior court
17 may order the probationer to report to the secretary of corrections or
18 such officer as the secretary may designate and as a condition of the
19 probation to follow the instructions of the secretary. If the county
20 legislative authority has elected to assume responsibility for the
21 supervision of superior court misdemeanor probationers within its
22 jurisdiction, the superior court misdemeanor probationer shall report
23 to a probation officer employed or contracted for by the county. In
24 cases where a superior court misdemeanor probationer is sentenced in
25 one county, but resides within another county, there must be provisions
26 for the probationer to report to the agency having supervision
27 responsibility for the probationer's county of residence.

28 (4) If restitution to the victim has been ordered under subsection
29 (2)(b) of this section and the superior court has ordered supervision,
30 the officer supervising the probationer shall make a reasonable effort
31 to ascertain whether restitution has been made as ordered. If the
32 superior court has ordered supervision and restitution has not been
33 made, the officer shall inform the prosecutor of that violation of the
34 terms of the suspended sentence not less than three months prior to the
35 termination of the suspended sentence.

36 (5) The provisions of RCW 9.94A.501 apply to sentences imposed
37 under this section.

1 **Sec. 3.** RCW 9.95.204 and 1996 c 298 s 1 are each amended to read
2 as follows:

3 (1) When a superior court places a defendant convicted of a
4 misdemeanor or gross misdemeanor on probation and orders supervision
5 under RCW 9.92.060 or 9.95.210, the department of corrections has
6 initial responsibility for supervision of that defendant.

7 (2) A county legislative authority may assume responsibility for
8 the supervision of all defendants within its jurisdiction who have been
9 convicted of a misdemeanor or gross misdemeanor and sentenced to
10 probation by a superior court. The assumption of responsibility shall
11 be made by contract with the department of corrections on a biennial
12 basis.

13 (3) If a county assumes supervision responsibility, the county
14 shall supervise all superior court misdemeanant probationers within
15 that county for the duration of the biennium, as set forth in the
16 contract with the department of corrections.

17 (4) A contract between a county legislative authority and the
18 department of corrections for the transfer of supervision
19 responsibility must include, at a minimum, the following provisions:

20 (a) The county's agreement to supervise all misdemeanant
21 probationers who are sentenced by a superior court within that county
22 and who reside within that county;

23 (b) A reciprocal agreement regarding the supervision of superior
24 court misdemeanant probationers sentenced in one county but who reside
25 in another county;

26 (c) The county's agreement to comply with the minimum standards for
27 classification and supervision of offenders as required under RCW
28 9.95.206;

29 (d) The amount of funds available from the department of
30 corrections to the county for supervision of superior court
31 misdemeanant probationers, calculated according to a formula
32 established by the department of corrections;

33 (e) A method for the payment of funds by the department of
34 corrections to the county;

35 (f) The county's agreement that any funds received by the county
36 under the contract will be expended only to cover costs of supervision
37 of superior court misdemeanant probationers;

1 (g) The county's agreement to account to the department of
2 corrections for the expenditure of all funds received under the
3 contract and to submit to audits for compliance with the supervision
4 standards and financial requirements of this section;

5 (h) Provisions regarding rights and remedies in the event of a
6 possible breach of contract or default by either party; and

7 (i) Provisions allowing for voluntary termination of the contract
8 by either party, with good cause, after sixty days' written notice.

9 (5) If the contract between the county and the department of
10 corrections is terminated for any reason, the department of corrections
11 shall reassume responsibility for supervision of superior court
12 misdemeanor probationers within that county. In such an event, the
13 department of corrections retains any and all rights and remedies
14 available by law and under the contract.

15 (6) The state of Washington, the department of corrections and its
16 employees, community corrections officers, and volunteers who assist
17 community corrections officers are not liable for any harm caused by
18 the actions of a superior court misdemeanor probationer who is under
19 the supervision of a county. A county, its probation department and
20 employees, probation officers, and volunteers who assist probation
21 officers are not liable for any harm caused by the actions of a
22 superior court misdemeanor probationer who is under the supervision of
23 the department of corrections. This subsection applies regardless of
24 whether the supervising entity is in compliance with the standards of
25 supervision at the time of the misdemeanor probationer's actions.

26 (7) The state of Washington, the department of corrections and its
27 employees, community corrections officers, any county under contract
28 with the department of corrections pursuant to this section and its
29 employees, probation officers, and volunteers who assist community
30 corrections officers and probation officers in the superior court
31 misdemeanor probation program are not liable for civil damages
32 resulting from any act or omission in the rendering of superior court
33 misdemeanor probation activities unless the act or omission
34 constitutes gross negligence. For purposes of this section,
35 "volunteers" is defined according to RCW 51.12.035.

36 (8) The provisions of RCW 9.94A.501 apply to sentences imposed
37 under this section.

1 **Sec. 4.** RCW 9.95.210 and 1996 c 298 s 3 are each amended to read
2 as follows:

3 (1) In granting probation, the superior court may suspend the
4 imposition or the execution of the sentence and may direct that the
5 suspension may continue upon such conditions and for such time as it
6 shall designate, not exceeding the maximum term of sentence or two
7 years, whichever is longer.

8 (2) In the order granting probation and as a condition thereof, the
9 superior court may in its discretion imprison the defendant in the
10 county jail for a period not exceeding one year and may fine the
11 defendant any sum not exceeding the statutory limit for the offense
12 committed, and court costs. As a condition of probation, the superior
13 court shall require the payment of the penalty assessment required by
14 RCW 7.68.035. The superior court may also require the defendant to
15 make such monetary payments, on such terms as it deems appropriate
16 under the circumstances, as are necessary: (a) To comply with any
17 order of the court for the payment of family support; (b) to make
18 restitution to any person or persons who may have suffered loss or
19 damage by reason of the commission of the crime in question or when the
20 offender pleads guilty to a lesser offense or fewer offenses and agrees
21 with the prosecutor's recommendation that the offender be required to
22 pay restitution to a victim of an offense or offenses which are not
23 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be
24 imposed and court costs, including reimbursement of the state for costs
25 of extradition if return to this state by extradition was required; (d)
26 following consideration of the financial condition of the person
27 subject to possible electronic monitoring, to pay for the costs of
28 electronic monitoring if that monitoring was required by the court as
29 a condition of release from custody or as a condition of probation; (e)
30 to contribute to a county or interlocal drug fund; and (f) to make
31 restitution to a public agency for the costs of an emergency response
32 under RCW 38.52.430, and may require bonds for the faithful observance
33 of any and all conditions imposed in the probation.

34 (3) The superior court shall order restitution in all cases where
35 the victim is entitled to benefits under the crime victims'
36 compensation act, chapter 7.68 RCW. If the superior court does not
37 order restitution and the victim of the crime has been determined to be

1 entitled to benefits under the crime victims' compensation act, the
2 department of labor and industries, as administrator of the crime
3 victims' compensation program, may petition the superior court within
4 one year of imposition of the sentence for entry of a restitution
5 order. Upon receipt of a petition from the department of labor and
6 industries, the superior court shall hold a restitution hearing and
7 shall enter a restitution order.

8 (4) In granting probation, the superior court may order the
9 probationer to report to the secretary of corrections or such officer
10 as the secretary may designate and as a condition of the probation to
11 follow the instructions of the secretary. If the county legislative
12 authority has elected to assume responsibility for the supervision of
13 superior court misdemeanor probationers within its jurisdiction, the
14 superior court misdemeanor probationer shall report to a probation
15 officer employed or contracted for by the county. In cases where a
16 superior court misdemeanor probationer is sentenced in one county, but
17 resides within another county, there must be provisions for the
18 probationer to report to the agency having supervision responsibility
19 for the probationer's county of residence.

20 (5) If the probationer has been ordered to make restitution and the
21 superior court has ordered supervision, the officer supervising the
22 probationer shall make a reasonable effort to ascertain whether
23 restitution has been made. If the superior court has ordered
24 supervision and restitution has not been made as ordered, the officer
25 shall inform the prosecutor of that violation of the terms of probation
26 not less than three months prior to the termination of the probation
27 period. The secretary of corrections will promulgate rules and
28 regulations for the conduct of the person during the term of probation.
29 For defendants found guilty in district court, like functions as the
30 secretary performs in regard to probation may be performed by probation
31 officers employed for that purpose by the county legislative authority
32 of the county wherein the court is located.

33 (6) The provisions of RCW 9.94A.501 apply to sentences imposed
34 under this section.

35 NEW SECTION. **Sec. 5.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately."

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4 On page 1, line 1 of the title, after "gross misdemeanors;" strike
5 the remainder of the title and insert "amending RCW 9.94A.501,
6 9.92.060, 9.95.204, and 9.95.210; and declaring an emergency."

EFFECT: Adds an emergency clause, which will increase the savings
in FY 05 by \$200,000.

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