
SUBSTITUTE HOUSE BILL 2363

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Kagi, Dickerson, Sommers and Edwards)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to eliminating the supervision of certain
2 probationers by the department of corrections; amending RCW 9.94A.501,
3 9.92.060, 9.95.204, and 9.95.210; and declaring an emergency.

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

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

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

11 (2) The department shall supervise every offender sentenced to a
12 term of community custody, community placement, or community
13 supervision and every probationer:

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;

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 (ii) The offender or probationer has a prior conviction for:
10 (A) A sex offense;
11 (B) A violent offense;
12 (C) A crime against persons as defined in RCW 9.94A.411;
13 (D) A felony that is domestic violence as defined in RCW 10.99.020;
14 (E) A violation of RCW 9A.52.025 (residential burglary);
15 (F) A violation of, or an attempt, solicitation, or conspiracy to
16 violate, RCW 69.50.401 by manufacture or delivery or possession with
17 intent to deliver methamphetamine; or
18 (G) A violation of, or an attempt, solicitation, or conspiracy to
19 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
20 (iii) The conditions of the offender's community custody, community
21 placement, or community supervision or the probationer's supervision
22 include chemical dependency treatment;
23 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
24 or
25 (v) The offender is subject to supervision pursuant to RCW
26 9.94A.745.
27 (3) The department is not authorized to, and may not, supervise any
28 offender sentenced to a term of community custody, community placement,
29 or community supervision or any probationer unless the offender or
30 probationer is one for whom supervision is required under subsection
31 (2) of this section.
32 (4) For purposes of this section, "probationer" means a person
33 convicted of a misdemeanor or a gross misdemeanor who is required to be
34 supervised by the department in the community pursuant to RCW 9.92.060,
35 9.95.204, or 9.95.210.
36 (5) This section expires July 1, 2010.

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

3 (1) Whenever any person is convicted of any crime except murder,
4 burglary in the first degree, arson in the first degree, robbery, rape
5 of a child, or rape, the superior court may, in its discretion, at the
6 time of imposing sentence upon such person, direct that such sentence
7 be stayed and suspended until otherwise ordered by the superior court,
8 and that the sentenced person be placed under the charge of a community
9 corrections officer employed by the department of corrections, or if
10 the county elects to assume responsibility for the supervision of all
11 superior court misdemeanor probationers a probation officer employed
12 or contracted for by the county, upon such terms as the superior court
13 may determine.

14 (2) As a condition to suspension of sentence, the superior court
15 shall require the payment of the penalty assessment required by RCW
16 7.68.035. In addition, the superior court may require the convicted
17 person to make such monetary payments, on such terms as the superior
18 court deems appropriate under the circumstances, as are necessary: (a)
19 To comply with any order of the court for the payment of family
20 support; (b) to make restitution to any person or persons who may have
21 suffered loss or damage by reason of the commission of the crime in
22 question or when the offender pleads guilty to a lesser offense or
23 fewer offenses and agrees with the prosecutor's recommendation that the
24 offender be required to pay restitution to a victim of an offense or
25 offenses which are not prosecuted pursuant to a plea agreement; (c) to
26 pay any fine imposed and not suspended and the court or other costs
27 incurred in the prosecution of the case, including reimbursement of the
28 state for costs of extradition if return to this state by extradition
29 was required; and (d) to contribute to a county or interlocal drug
30 fund.

31 (3) As a condition of the suspended sentence, the superior court
32 may order the probationer to report to the secretary of corrections or
33 such officer as the secretary may designate and as a condition of the
34 probation to follow the instructions of the secretary. If the county
35 legislative authority has elected to assume responsibility for the
36 supervision of superior court misdemeanor probationers within its
37 jurisdiction, the superior court misdemeanor probationer shall report
38 to a probation officer employed or contracted for by the county. In

1 cases where a superior court misdemeanor probationer is sentenced in
2 one county, but resides within another county, there must be provisions
3 for the probationer to report to the agency having supervision
4 responsibility for the probationer's county of residence.

5 (4) If restitution to the victim has been ordered under subsection
6 (2)(b) of this section and the superior court has ordered supervision,
7 the officer supervising the probationer shall make a reasonable effort
8 to ascertain whether restitution has been made as ordered. If the
9 superior court has ordered supervision and restitution has not been
10 made, the officer shall inform the prosecutor of that violation of the
11 terms of the suspended sentence not less than three months prior to the
12 termination of the suspended sentence.

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

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

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

21 (2) A county legislative authority may assume responsibility for
22 the supervision of all defendants within its jurisdiction who have been
23 convicted of a misdemeanor or gross misdemeanor and sentenced to
24 probation by a superior court. The assumption of responsibility shall
25 be made by contract with the department of corrections on a biennial
26 basis.

27 (3) If a county assumes supervision responsibility, the county
28 shall supervise all superior court misdemeanor probationers within
29 that county for the duration of the biennium, as set forth in the
30 contract with the department of corrections.

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

34 (a) The county's agreement to supervise all misdemeanor
35 probationers who are sentenced by a superior court within that county
36 and who reside within that county;

1 (b) A reciprocal agreement regarding the supervision of superior
2 court misdemeanant probationers sentenced in one county but who reside
3 in another county;

4 (c) The county's agreement to comply with the minimum standards for
5 classification and supervision of offenders as required under RCW
6 9.95.206;

7 (d) The amount of funds available from the department of
8 corrections to the county for supervision of superior court
9 misdemeanant probationers, calculated according to a formula
10 established by the department of corrections;

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

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

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

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

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

24 (5) If the contract between the county and the department of
25 corrections is terminated for any reason, the department of corrections
26 shall reassume responsibility for supervision of superior court
27 misdemeanant probationers within that county. In such an event, the
28 department of corrections retains any and all rights and remedies
29 available by law and under the contract.

30 (6) The state of Washington, the department of corrections and its
31 employees, community corrections officers, and volunteers who assist
32 community corrections officers are not liable for any harm caused by
33 the actions of a superior court misdemeanant probationer who is under
34 the supervision of a county. A county, its probation department and
35 employees, probation officers, and volunteers who assist probation
36 officers are not liable for any harm caused by the actions of a
37 superior court misdemeanant probationer who is under the supervision of

1 the department of corrections. This subsection applies regardless of
2 whether the supervising entity is in compliance with the standards of
3 supervision at the time of the misdemeanor probationer's actions.

4 (7) The state of Washington, the department of corrections and its
5 employees, community corrections officers, any county under contract
6 with the department of corrections pursuant to this section and its
7 employees, probation officers, and volunteers who assist community
8 corrections officers and probation officers in the superior court
9 misdemeanor probation program are not liable for civil damages
10 resulting from any act or omission in the rendering of superior court
11 misdemeanor probation activities unless the act or omission
12 constitutes gross negligence. For purposes of this section,
13 "volunteers" is defined according to RCW 51.12.035.

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

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

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

23 (2) In the order granting probation and as a condition thereof, the
24 superior court may in its discretion imprison the defendant in the
25 county jail for a period not exceeding one year and may fine the
26 defendant any sum not exceeding the statutory limit for the offense
27 committed, and court costs. As a condition of probation, the superior
28 court shall require the payment of the penalty assessment required by
29 RCW 7.68.035. The superior court may also require the defendant to
30 make such monetary payments, on such terms as it deems appropriate
31 under the circumstances, as are necessary: (a) To comply with any
32 order of the court for the payment of family support; (b) to make
33 restitution to any person or persons who may have suffered loss or
34 damage by reason of the commission of the crime in question or when the
35 offender pleads guilty to a lesser offense or fewer offenses and agrees
36 with the prosecutor's recommendation that the offender be required to
37 pay restitution to a victim of an offense or offenses which are not

1 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be
2 imposed and court costs, including reimbursement of the state for costs
3 of extradition if return to this state by extradition was required; (d)
4 following consideration of the financial condition of the person
5 subject to possible electronic monitoring, to pay for the costs of
6 electronic monitoring if that monitoring was required by the court as
7 a condition of release from custody or as a condition of probation; (e)
8 to contribute to a county or interlocal drug fund; and (f) to make
9 restitution to a public agency for the costs of an emergency response
10 under RCW 38.52.430, and may require bonds for the faithful observance
11 of any and all conditions imposed in the probation.

12 (3) The superior court shall order restitution in all cases where
13 the victim is entitled to benefits under the crime victims'
14 compensation act, chapter 7.68 RCW. If the superior court does not
15 order restitution and the victim of the crime has been determined to be
16 entitled to benefits under the crime victims' compensation act, the
17 department of labor and industries, as administrator of the crime
18 victims' compensation program, may petition the superior court within
19 one year of imposition of the sentence for entry of a restitution
20 order. Upon receipt of a petition from the department of labor and
21 industries, the superior court shall hold a restitution hearing and
22 shall enter a restitution order.

23 (4) In granting probation, the superior court may order the
24 probationer to report to the secretary of corrections or such officer
25 as the secretary may designate and as a condition of the probation to
26 follow the instructions of the secretary. If the county legislative
27 authority has elected to assume responsibility for the supervision of
28 superior court misdemeanor probationers within its jurisdiction, the
29 superior court misdemeanor probationer shall report to a probation
30 officer employed or contracted for by the county. In cases where a
31 superior court misdemeanor probationer is sentenced in one county, but
32 resides within another county, there must be provisions for the
33 probationer to report to the agency having supervision responsibility
34 for the probationer's county of residence.

35 (5) If the probationer has been ordered to make restitution and the
36 superior court has ordered supervision, the officer supervising the
37 probationer shall make a reasonable effort to ascertain whether
38 restitution has been made. If the superior court has ordered

1 supervision and restitution has not been made as ordered, the officer
2 shall inform the prosecutor of that violation of the terms of probation
3 not less than three months prior to the termination of the probation
4 period. The secretary of corrections will promulgate rules and
5 regulations for the conduct of the person during the term of probation.
6 For defendants found guilty in district court, like functions as the
7 secretary performs in regard to probation may be performed by probation
8 officers employed for that purpose by the county legislative authority
9 of the county wherein the court is located.

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

12 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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