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HOUSE BILL 2363

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Kagi, Dickerson, Sommers and Edwards

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Committee on Criminal Justice & Corrections.

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

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.

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