
SENATE BILL 6440

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By Senators Carlson, Zarelli, Benton, Eide and Rasmussen

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1 AN ACT Relating to restrictions on the residency of sex offenders
2 during their period of community custody; and amending RCW 9.94A.710,
3 9.94A.712, and 9.94A.715.

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

5 **Sec. 1.** RCW 9.94A.710 and 2000 c 28 s 24 are each amended to read
6 as follows:

7 (1) When a court sentences a person to the custody of the
8 department for an offense categorized as a sex offense, including those
9 sex offenses also included in other offense categories, committed on or
10 after June 6, 1996, and before July 1, 2000, the court shall, in
11 addition to other terms of the sentence, sentence the offender to
12 community custody for three years or up to the period of earned release
13 awarded pursuant to RCW 9.94A.728, whichever is longer. The community
14 custody shall begin either upon completion of the term of confinement
15 or at such time as the offender is transferred to community custody in
16 lieu of earned release.

17 (2) (~~Unless a condition is waived by the court,~~) The terms of
18 community custody imposed under this section shall include the
19 condition that offenders classified pursuant to RCW 72.09.345 as risk

1 level II or III offenders shall not establish a residence with, or
2 within one thousand feet of, other risk level II or III offenders
3 currently under community custody for the commission of a sex offense
4 and, unless waived by the court, other conditions shall be the same as
5 those provided for in RCW 9.94A.700(4) and may include those provided
6 for in RCW 9.94A.700(5). As part of any sentence that includes a term
7 of community custody imposed under this section, the court shall also
8 require the offender to comply with any conditions imposed by the
9 department under RCW 9.94A.720.

10 (3) At any time prior to the completion of a sex offender's term of
11 community custody, if the court finds that public safety would be
12 enhanced, the court may impose and enforce an order extending any or
13 all of the conditions imposed pursuant to this section for a period up
14 to the maximum allowable sentence for the crime as it is classified in
15 chapter 9A.20 RCW, regardless of the expiration of the offender's term
16 of community custody. If a violation of a condition extended under
17 this subsection occurs after the expiration of the offender's term of
18 community custody, it shall be deemed a violation of the sentence for
19 the purposes of RCW 9.94A.631 and may be punishable as contempt of
20 court as provided for in RCW 7.21.040.

21 **Sec. 2.** RCW 9.94A.712 and 2001 2nd sp.s. c 12 s 303 are each
22 amended to read as follows:

23 (1) An offender who is not a persistent offender shall be sentenced
24 under this section if the offender:

25 (a) Is convicted of:

26 (i) Rape in the first degree, rape in the second degree, rape of a
27 child in the first degree, child molestation in the first degree, rape
28 of a child in the second degree, or indecent liberties by forcible
29 compulsion;

30 (ii) Any of the following offenses with a finding of sexual
31 motivation: Murder in the first degree, murder in the second degree,
32 homicide by abuse, kidnapping in the first degree, kidnapping in the
33 second degree, assault in the first degree, assault in the second
34 degree, assault of a child in the first degree, or burglary in the
35 first degree; or

36 (iii) An attempt to commit any crime listed in this subsection

37 (1)(a);

1 committed on or after September 1, 2001; or

2 (b) Has a prior conviction for an offense listed in RCW
3 9.94A.030(32)(b), and is convicted of any sex offense which was
4 committed after September 1, 2001.

5 For purposes of this subsection (1)(b), failure to register is not
6 a sex offense.

7 (2) An offender convicted of rape of a child in the first or second
8 degree or child molestation in the first degree who was seventeen years
9 of age or younger at the time of the offense shall not be sentenced
10 under this section.

11 (3) Upon a finding that the offender is subject to sentencing under
12 this section, the court shall impose a sentence to a maximum term
13 consisting of the statutory maximum sentence for the offense and a
14 minimum term either within the standard sentence range for the offense,
15 or outside the standard sentence range pursuant to RCW 9.94A.535, if
16 the offender is otherwise eligible for such a sentence.

17 (4) A person sentenced under subsection (3) of this section shall
18 serve the sentence in a facility or institution operated, or utilized
19 under contract, by the state.

20 (5) When a court sentences a person to the custody of the
21 department under this section, the court shall, in addition to the
22 other terms of the sentence, sentence the offender to community custody
23 under the supervision of the department and the authority of the board
24 for any period of time the person is released from total confinement
25 before the expiration of the maximum sentence.

26 (6)(a) (~~Unless a condition is waived by the court,~~) The
27 conditions of community custody for those offenders convicted of the
28 crimes listed in subsection (1)(a)(i) of this section and classified
29 pursuant to RCW 72.09.345 as risk level II or III offenders shall
30 include the condition that those offenders shall not establish a
31 residence with, or within one thousand feet of, other risk level II or
32 III offenders currently under community custody for the commission of
33 a sex offense and, unless waived by the court, shall include those
34 provided for in RCW 9.94A.700(4). The conditions may also include
35 those provided for in RCW 9.94A.700(5). The court may also order the
36 offender to participate in rehabilitative programs or otherwise perform
37 affirmative conduct reasonably related to the circumstances of the

1 offense, the offender's risk of reoffending, or the safety of the
2 community, and the department and the board shall enforce such
3 conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

4 (b) As part of any sentence under this section, the court shall
5 also require the offender to comply with any conditions imposed by the
6 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

7 **Sec. 3.** RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read
8 as follows:

9 (1) When a court sentences a person to the custody of the
10 department for a sex offense not sentenced under RCW 9.94A.712, a
11 violent offense, any crime against persons under RCW 9.94A.411(2), or
12 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
13 after July 1, 2000, the court shall in addition to the other terms of
14 the sentence, sentence the offender to community custody for the
15 community custody range established under RCW 9.94A.850 or up to the
16 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
17 whichever is longer. The community custody shall begin: (a) Upon
18 completion of the term of confinement; (b) at such time as the offender
19 is transferred to community custody in lieu of earned release in
20 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
21 offenders sentenced under RCW 9.94A.660, upon failure to complete or
22 administrative termination from the special drug offender sentencing
23 alternative program. Except as provided in RCW 9.94A.501, the
24 department shall supervise any sentence of community custody imposed
25 under this section.

26 (2)(a) (~~Unless a condition is waived by the court,~~) The
27 conditions of community custody for those persons convicted of a sex
28 offense and classified pursuant to RCW 72.09.345 as risk level II or
29 III offenders shall include the condition that those offenders shall
30 not establish a residence with, or within one thousand feet of, other
31 risk level II or III offenders currently under community custody for
32 the commission of a sex offense and, unless waived by the court, other
33 conditions shall include those provided for in RCW 9.94A.700(4). The
34 conditions may also include those provided for in RCW 9.94A.700(5).
35 The court may also order the offender to participate in rehabilitative
36 programs or otherwise perform affirmative conduct reasonably related to

1 the circumstances of the offense, the offender's risk of reoffending,
2 or the safety of the community, and the department shall enforce such
3 conditions pursuant to subsection (6) of this section.

4 (b) As part of any sentence that includes a term of community
5 custody imposed under this subsection, the court shall also require the
6 offender to comply with any conditions imposed by the department under
7 RCW 9.94A.720. The department shall assess the offender's risk of
8 reoffense and may establish and modify additional conditions of the
9 offender's community custody based upon the risk to community safety.
10 In addition, the department may require the offender to participate in
11 rehabilitative programs, or otherwise perform affirmative conduct, and
12 to obey all laws.

13 (c) The department may not impose conditions that are contrary to
14 those ordered by the court and may not contravene or decrease court
15 imposed conditions. The department shall notify the offender in
16 writing of any such conditions or modifications. In setting,
17 modifying, and enforcing conditions of community custody, the
18 department shall be deemed to be performing a quasi-judicial function.

19 (3) If an offender violates conditions imposed by the court or the
20 department pursuant to this section during community custody, the
21 department may transfer the offender to a more restrictive confinement
22 status and impose other available sanctions as provided in RCW
23 9.94A.737 and 9.94A.740.

24 (4) Except for terms of community custody under RCW 9.94A.670, the
25 department shall discharge the offender from community custody on a
26 date determined by the department, which the department may modify,
27 based on risk and performance of the offender, within the range or at
28 the end of the period of earned release, whichever is later.

29 (5) At any time prior to the completion or termination of a sex
30 offender's term of community custody, if the court finds that public
31 safety would be enhanced, the court may impose and enforce an order
32 extending any or all of the conditions imposed pursuant to this section
33 for a period up to the maximum allowable sentence for the crime as it
34 is classified in chapter 9A.20 RCW, regardless of the expiration of the
35 offender's term of community custody. If a violation of a condition
36 extended under this subsection occurs after the expiration of the
37 offender's term of community custody, it shall be deemed a violation of
38 the sentence for the purposes of RCW 9.94A.631 and may be punishable as

1 contempt of court as provided for in RCW 7.21.040. If the court
2 extends a condition beyond the expiration of the term of community
3 custody, the department is not responsible for supervision of the
4 offender's compliance with the condition.

5 (6) Within the funds available for community custody, the
6 department shall determine conditions and duration of community custody
7 on the basis of risk to community safety, and shall supervise offenders
8 during community custody on the basis of risk to community safety and
9 conditions imposed by the court. The secretary shall adopt rules to
10 implement the provisions of this subsection.

11 (7) By the close of the next business day after receiving notice of
12 a condition imposed or modified by the department, an offender may
13 request an administrative review under rules adopted by the department.
14 The condition shall remain in effect unless the reviewing officer finds
15 that it is not reasonably related to any of the following: (a) The
16 crime of conviction; (b) the offender's risk of reoffending; or (c) the
17 safety of the community.

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