
SUBSTITUTE SENATE BILL 5256

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Stevens)

READ FIRST TIME 02/15/05.

1 AN ACT Relating to misdemeanors and gross misdemeanors; amending
2 RCW 9.94A.501, 9.92.060, 9.95.204, and 9.95.210; and declaring an
3 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 a probationer sentenced
10 in superior court into one of 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 misdemeanor and gross misdemeanor probationer
14 ordered by a superior court to probation under the supervision of the
15 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

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

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

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

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

35 **Sec. 2.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read

36 as follows:

- 37 (1) Whenever any person is convicted of any crime except murder,

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

11 (2) As a condition to suspension of sentence, the superior court
12 shall require the payment of the penalty assessment required by RCW
13 7.68.035. In addition, the superior court may require the convicted
14 person to make such monetary payments, on such terms as the superior
15 court deems appropriate under the circumstances, as are necessary: (a)
16 To comply with any order of the court for the payment of family
17 support; (b) to make restitution to any person or persons who may have
18 suffered loss or damage by reason of the commission of the crime in
19 question or when the offender pleads guilty to a lesser offense or
20 fewer offenses and agrees with the prosecutor's recommendation that the
21 offender be required to pay restitution to a victim of an offense or
22 offenses which are not prosecuted pursuant to a plea agreement; (c) to
23 pay any fine imposed and not suspended and the court or other costs
24 incurred in the prosecution of the case, including reimbursement of the
25 state for costs of extradition if return to this state by extradition
26 was required; and (d) to contribute to a county or interlocal drug
27 fund.

28 (3) As a condition of the suspended sentence, the superior court
29 may order the probationer to report to the secretary of corrections or
30 such officer as the secretary may designate and as a condition of the
31 probation to follow the instructions of the secretary. If the county
32 legislative authority has elected to assume responsibility for the
33 supervision of superior court misdemeanor probationers within its
34 jurisdiction, the superior court misdemeanor probationer shall report
35 to a probation officer employed or contracted for by the county. In
36 cases where a superior court misdemeanor probationer is sentenced in
37 one county, but resides within another county, there must be provisions

1 for the probationer to report to the agency having supervision
2 responsibility for the probationer's county of residence.

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

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

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

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

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

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

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

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

35 (b) A reciprocal agreement regarding the supervision of superior
36 court misdemeanant probationers sentenced in one county but who reside
37 in another county;

1 (c) The county's agreement to comply with the minimum standards for
2 classification and supervision of offenders as required under RCW
3 9.95.206;

4 (d) The amount of funds available from the department of
5 corrections to the county for supervision of superior court
6 misdemeanor probationers, calculated according to a formula
7 established by the department of corrections;

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

10 (f) The county's agreement that any funds received by the county
11 under the contract will be expended only to cover costs of supervision
12 of superior court misdemeanor probationers;

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

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

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

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

27 (6) The state of Washington, the department of corrections and its
28 employees, community corrections officers, and volunteers who assist
29 community corrections officers are not liable for any harm caused by
30 the actions of a superior court misdemeanor probationer who is under
31 the supervision of a county. A county, its probation department and
32 employees, probation officers, and volunteers who assist probation
33 officers are not liable for any harm caused by the actions of a
34 superior court misdemeanor probationer who is under the supervision of
35 the department of corrections. This subsection applies regardless of
36 whether the supervising entity is in compliance with the standards of
37 supervision at the time of the misdemeanor probationer's actions.

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

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

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

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

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

1 following consideration of the financial condition of the person
2 subject to possible electronic monitoring, to pay for the costs of
3 electronic monitoring if that monitoring was required by the court as
4 a condition of release from custody or as a condition of probation; (e)
5 to contribute to a county or interlocal drug fund; and (f) to make
6 restitution to a public agency for the costs of an emergency response
7 under RCW 38.52.430, and may require bonds for the faithful observance
8 of any and all conditions imposed in the probation.

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

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

32 (5) If the probationer has been ordered to make restitution and the
33 superior court has ordered supervision, the officer supervising the
34 probationer shall make a reasonable effort to ascertain whether
35 restitution has been made. If the superior court has ordered
36 supervision and restitution has not been made as ordered, the officer
37 shall inform the prosecutor of that violation of the terms of probation
38 not less than three months prior to the termination of the probation

1 period. The secretary of corrections will promulgate rules and
2 regulations for the conduct of the person during the term of probation.
3 For defendants found guilty in district court, like functions as the
4 secretary performs in regard to probation may be performed by probation
5 officers employed for that purpose by the county legislative authority
6 of the county wherein the court is located.

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

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

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