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SENATE BILL 5760

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State of Washington

59th Legislature

2005 Regular Session

By Senator Kline

Read first time 02/04/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.570;  
2 adding new sections to chapter 9.94A RCW; providing an effective date;  
3 and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read  
6 as follows:

7 (1) Notwithstanding the statutory maximum sentence or any other  
8 provision of this chapter, a persistent offender, with a criminal  
9 history or current offense that includes at least one class A felony,  
10 shall be sentenced to a term of total confinement for life without the  
11 possibility of release or, when authorized by RCW 10.95.030 for the  
12 crime of aggravated murder in the first degree, sentenced to death. In  
13 addition, no offender subject to this section may be eligible for  
14 community custody, earned release time, furlough, home detention,  
15 partial confinement, work crew, work release, or any other form of  
16 release as defined under RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or  
17 (9), or any other form of authorized leave from a correctional facility  
18 while not in the direct custody of a corrections officer or officers,  
19 except: ~~((+1))~~ (a) In the case of an offender in need of emergency

1 medical treatment; or ((+2)) (b) for the purpose of commitment to an  
2 inpatient treatment facility in the case of an offender convicted of  
3 the crime of rape in the first degree.

4 (2) Notwithstanding the statutory maximum sentence or any other  
5 provision of this chapter, a persistent offender, with a criminal  
6 history or current offense that does not include any class A felonies,  
7 shall be sentenced to a term of total confinement for life. Prior to  
8 serving a minimum term of fifteen years, no offender subject to this  
9 section may be eligible for community custody, earned release time,  
10 furlough, home detention, partial confinement, work crew, work release,  
11 or any other form of release as defined under RCW 9.94A.728 (1), (2),  
12 (3), (4), (6), (8), or (9), or any other form of authorized leave from  
13 a correctional facility while not in the direct custody of a  
14 corrections officer or officers, except in the case of an offender in  
15 need of emergency medical treatment. After serving the minimum  
16 fifteen-year term of total confinement, the offender may be eligible  
17 for community custody, earned release time, furlough, home detention,  
18 partial confinement, work crew, work release, or any other form of  
19 release as defined under RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or  
20 (9), or any other form of authorized leave from a correctional  
21 facility.

22 NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW  
23 to read as follows:

24 (1) The fifteen-year term of total confinement imposed by the court  
25 under RCW 9.94A.570(2) constitutes the release eligibility review date  
26 at which time the court shall review the offender for conditional  
27 release to community custody.

28 (2) Not less than ninety days prior to the release eligibility  
29 review date, the court shall review the person for conditional release  
30 to community custody. If the court does not release the offender, it  
31 shall set a new term not to exceed an additional two years confinement.  
32 The court shall continue biennial review for conditional release  
33 eligibility until the offender qualifies for conditional release or the  
34 offender has completed the life sentence.

35 (3) In making its determination on duration of total confinement,  
36 the court shall consider the purposes, standards, and sentencing ranges  
37 adopted in this chapter, the recommendations of the sentencing judge

1 and prosecuting attorney, statements and recommendations from the crime  
2 victims, if any, and shall attempt to make determinations reasonably  
3 consistent with those purposes, standards, and ranges. The court shall  
4 give public safety and future dangerousness in the community  
5 considerations the highest priority when making its decisions.

6 (4) The court shall give adequate written reasons for its decision  
7 to grant conditional release to community custody or extend the minimum  
8 term.

9 (5) The offender's eligibility for conditional release to community  
10 custody shall be subject to the terms and conditions imposed by the  
11 court for such time as the court shall designate. An offender, who  
12 breaches a term or condition of release, shall be subject to all of the  
13 procedures and remedies provided in this chapter.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW  
15 to read as follows:

16 In any criminal case wherein an offender has been sentenced as a  
17 persistent offender prior to the effective date of this act, the  
18 offender shall have a resentencing hearing if the offender would  
19 otherwise qualify for release under RCW 9.94A.570(2) and section 2 of  
20 this act.

21 The prosecuting attorney for the county in which any offender was  
22 sentenced as a persistent offender shall review each sentencing  
23 document. If an offender was a persistent offender based on a criminal  
24 history or current offense that did not include any class A felonies,  
25 the prosecuting attorney shall, or the offender may, make a motion for  
26 relief from sentence to the original sentencing court.

27 The sentencing court shall grant the motion if it finds that no  
28 current or past conviction for a class A felony was used as a basis for  
29 a finding that the offender was a persistent offender and the court  
30 shall immediately set an expedited date for resentencing. At  
31 resentencing, the court shall sentence the offender under the  
32 provisions of RCW 9.94A.570(2) and section 2 of this act.

33 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 July 1, 2005.

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