
HOUSE BILL 1592

State of Washington

60th Legislature

2007 Regular Session

By Representative Hurst; by request of Indeterminate Sentence Review Board

Read first time 01/23/2007. Referred to Committee on Human Services.

1 AN ACT Relating to the indeterminate sentenced offenders; and
2 amending RCW 9.95.011, 9.95.420, 9.95.435, and 9.96.050.

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

4 **Sec. 1.** RCW 9.95.011 and 2002 c 174 s 2 are each amended to read
5 as follows:

6 (1) When the court commits a convicted person to the department of
7 corrections on or after July 1, 1986, for an offense committed before
8 July 1, 1984, the court shall, at the time of sentencing or revocation
9 of probation, fix the minimum term. The term so fixed shall not exceed
10 the maximum sentence provided by law for the offense of which the
11 person is convicted.

12 The court shall attempt to set the minimum term reasonably
13 consistent with the purposes, standards, and sentencing ranges adopted
14 under RCW 9.94A.850, but the court is subject to the same limitations
15 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
16 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
17 court's minimum term decision is subject to review to the same extent
18 as a minimum term decision by the parole board before July 1, 1986.

1 Thereafter, the expiration of the minimum term set by the court
2 minus any time credits earned under RCW 9.95.070 and 9.95.110
3 constitutes the parole eligibility review date, at which time the board
4 may consider the convicted person for parole under RCW 9.95.100 and
5 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
6 board's authority to reduce or increase the minimum term, once set by
7 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
8 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

9 (2)(a) Except as provided in (b) of this subsection, not less than
10 ninety days prior to the expiration of the minimum term of a person
11 sentenced under RCW 9.94A.712, for a sex offense committed on or after
12 September 1, 2001, less any time credits permitted by statute, the
13 board shall review the person for conditional release to community
14 custody as provided in RCW 9.95.420. If the board does not release the
15 person, it shall set a new minimum term not to exceed an additional
16 ~~((two))~~ five years. The board shall review the person again not less
17 than ninety days prior to the expiration of the new minimum term. The
18 board's rules shall permit an offender to petition for an earlier
19 review if circumstances change or the board receives new information
20 that would warrant an earlier review.

21 (b) If at the time a person sentenced under RCW 9.94A.712 for a sex
22 offense committed on or after September 1, 2001, arrives at a
23 department of corrections facility, the offender's minimum term has
24 expired or will expire within one hundred twenty days of the offender's
25 arrival, then no later than one hundred twenty days after the
26 offender's arrival at a department of corrections facility, but after
27 the board receives the results from the end of sentence review process
28 and the recommendations for additional or modified conditions of
29 community custody from the department, the board shall review the
30 person for conditional release to community custody as provided in RCW
31 9.95.420. If the board does not release the person, it shall set a new
32 minimum term not to exceed an additional ~~((two))~~ five years. The board
33 shall review the person again not less than ninety days prior to the
34 expiration of the new minimum term. The board's rules shall permit an
35 offender to petition for an earlier review if circumstances change or
36 the board receives new information that would warrant an earlier
37 review.

1 **Sec. 2.** RCW 9.95.420 and 2006 c 313 s 2 are each amended to read
2 as follows:

3 (1)(a) Except as provided in (c) of this subsection, before the
4 expiration of the minimum term, as part of the end of sentence review
5 process under RCW 72.09.340, 72.09.345, and where appropriate,
6 72.09.370, the department shall conduct, and the offender shall
7 participate in, an examination of the offender, incorporating
8 methodologies that are recognized by experts in the prediction of
9 sexual dangerousness, and including a prediction of the probability
10 that the offender will engage in sex offenses if released.

11 (b) The board may contract for an additional, independent
12 examination, subject to the standards in this section.

13 (c) If at the time the sentence is imposed by the superior court
14 the offender's minimum term has expired or will expire within one
15 hundred twenty days of the sentencing hearing, the department shall
16 conduct, within ninety days of the offender's arrival at a department
17 of corrections facility, and the offender shall participate in, an
18 examination of the offender, incorporating methodologies that are
19 recognized by experts in the prediction of sexual dangerousness, and
20 including a prediction of the probability that the offender will engage
21 in sex offenses if released.

22 (2) The board shall impose the conditions and instructions provided
23 for in RCW 9.94A.720. The board shall consider the department's
24 recommendations and may impose conditions in addition to those
25 recommended by the department. The board may impose or modify
26 conditions of community custody following notice to the offender.

27 (3)(a) Except as provided in (b) of this subsection, no later than
28 ninety days before expiration of the minimum term, but after the board
29 receives the results from the end of sentence review process and the
30 recommendations for additional or modified conditions of community
31 custody from the department, the board shall conduct a hearing to
32 determine whether it is more likely than not that the offender will
33 engage in sex offenses if released on conditions to be set by the
34 board. The board may consider an offender's failure to participate in
35 an evaluation under subsection (1) of this section in determining
36 whether to release the offender. The board shall order the offender
37 released, under such affirmative and other conditions as the board
38 determines appropriate, unless the board determines by a preponderance

1 of the evidence that, despite such conditions, it is more likely than
2 not that the offender will commit sex offenses if released. If the
3 board does not order the offender released, the board shall establish
4 a new minimum term, not to exceed an additional (~~two~~) five years.

5 (b) If at the time the offender's minimum term has expired or will
6 expire within one hundred twenty days of the offender's arrival at a
7 department of correction's facility, then no later than one hundred
8 twenty days after the offender's arrival at a department of corrections
9 facility, but after the board receives the results from the end of
10 sentence review process and the recommendations for additional or
11 modified conditions of community custody from the department, the board
12 shall conduct a hearing to determine whether it is more likely than not
13 that the offender will engage in sex offenses if released on conditions
14 to be set by the board. The board may consider an offender's failure
15 to participate in an evaluation under subsection (1) of this section in
16 determining whether to release the offender. The board shall order the
17 offender released, under such affirmative and other conditions as the
18 board determines appropriate, unless the board determines by a
19 preponderance of the evidence that, despite such conditions, it is more
20 likely than not that the offender will commit sex offenses if released.
21 If the board does not order the offender released, the board shall
22 establish a new minimum term, not to exceed an additional (~~two~~) five
23 years.

24 (4) In a hearing conducted under subsection (3) of this section,
25 the board shall provide opportunities for the victims of any crimes for
26 which the offender has been convicted to present oral, video, written,
27 or in-person testimony to the board. The procedures for victim input
28 shall be developed by rule. To facilitate victim involvement, county
29 prosecutor's offices shall ensure that any victim impact statements and
30 known contact information for victims of record are forwarded as part
31 of the judgment and sentence.

32 **Sec. 3.** RCW 9.95.435 and 2003 c 218 s 1 are each amended to read
33 as follows:

34 (1) If an offender released by the board under RCW 9.95.420
35 violates any condition or requirement of community custody, the board
36 may transfer the offender to a more restrictive confinement status to
37 serve up to the remaining portion of the sentence, less credit for any

1 period actually spent in community custody or in detention awaiting
2 disposition of an alleged violation and subject to the limitations of
3 subsection (2) of this section.

4 (2) Following the hearing specified in subsection (3) of this
5 section, the board may impose sanctions such as work release, home
6 detention with electronic monitoring, work crew, community restitution,
7 inpatient treatment, daily reporting, curfew, educational or counseling
8 sessions, supervision enhanced through electronic monitoring, or any
9 other sanctions available in the community, or may suspend the release
10 and sanction up to sixty days' confinement in a local correctional
11 facility for each violation, or revoke the release to community custody
12 whenever an offender released by the board under RCW 9.95.420 violates
13 any condition or requirement of community custody.

14 (3) If an offender released by the board under RCW 9.95.420 is
15 accused of violating any condition or requirement of community custody,
16 he or she is entitled to a hearing before the board or a designee of
17 the board prior to the imposition of sanctions. The hearing shall be
18 considered as offender disciplinary proceedings and shall not be
19 subject to chapter 34.05 RCW. The board shall develop hearing
20 procedures and a structure of graduated sanctions consistent with the
21 hearing procedures and graduated sanctions developed pursuant to RCW
22 9.94A.737. The board may suspend the offender's release to community
23 custody and confine the offender in a correctional institution owned,
24 operated by, or operated under contract with the state prior to the
25 hearing unless the offender has been arrested and confined for a new
26 criminal offense.

27 (4) The hearing procedures required under subsection (3) of this
28 section shall be developed by rule and include the following:

29 (a) Hearings shall be conducted by members or designees of the
30 board unless the board enters into an agreement with the department to
31 use the hearing officers established under RCW 9.94A.737;

32 (b) The board shall provide the offender with (~~written notice of~~
33 ~~the violation,~~) findings and conclusions which include the evidence
34 relied upon, and the reasons the particular sanction was imposed.
35 (~~The notice shall include a statement of the rights specified in this~~
36 ~~subsection, and the offender's~~) The offender will be notified of the
37 right to appeal the sanction and the right to file a personal restraint
38 petition under court rules after the final decision of the board;

1 (c) The hearing shall be held unless waived by the offender, and
2 shall be electronically recorded. For offenders not in total
3 confinement, the hearing shall be held within thirty days of service of
4 notice of the violation, but not less than twenty-four hours after
5 notice of the violation. For offenders in total confinement, the
6 hearing shall be held within thirty days of service of notice of the
7 violation, but not less than twenty-four hours after notice of the
8 violation. The board or its designee shall make a determination
9 whether probable cause exists to believe the violation or violations
10 occurred. The determination shall be made within forty-eight hours of
11 receipt of the allegation;

12 (d) The offender shall have the right to: (i) Be present at the
13 hearing; (ii) have the assistance of a person qualified to assist the
14 offender in the hearing, appointed by the (~~hearing examiner~~)
15 presiding hearing officer if the offender has a language or
16 communications barrier; (iii) testify or remain silent; (iv) call
17 witnesses and present documentary evidence; (v) question witnesses who
18 appear and testify; and (vi) be represented by counsel if revocation of
19 the release to community custody upon a finding of violation is a
20 probable sanction for the violation. The board may not revoke the
21 release to community custody of any offender who was not represented by
22 counsel at the hearing, unless the offender has waived the right to
23 counsel; and

24 (e) The sanction shall take effect if affirmed by the (~~hearing~~
25 ~~examiner~~) presiding hearing officer.

26 (5) Within seven days after the (~~hearing examiner's~~) presiding
27 hearing officer's decision, the offender may appeal the decision to the
28 full board or to a panel of three reviewing examiners designated by the
29 chair of the board or by the chair's designee. The sanction shall be
30 reversed or modified if a majority of the panel finds that the sanction
31 was not reasonably related to any of the following: (a) The crime of
32 conviction; (b) the violation committed; (c) the offender's risk of
33 reoffending; or (d) the safety of the community.

34 (6) For purposes of this section, no finding of a violation of
35 conditions may be based on unconfirmed or unconfirmable allegations.

36 **Sec. 4.** RCW 9.96.050 and 2002 c 16 s 3 are each amended to read as
37 follows:

1 (1)(a) When ((a prisoner)) an offender on parole has performed all
2 obligations of his or her release, including any and all legal
3 financial obligations, for such time as shall satisfy the indeterminate
4 sentence review board that his or her final release is not incompatible
5 with the best interests of society and the welfare of the paroled
6 individual, the board may make a final order of discharge and issue a
7 certificate of discharge to the ((prisoner)) offender. ((The
8 certificate of discharge shall be issued to the offender in person or
9 by mail to the prisoner's last known address.))

10 (b) The board retains the jurisdiction to issue a certificate of
11 discharge after the expiration of the offender's or parolee's maximum
12 statutory sentence. If not earlier granted and any and all legal
13 financial obligations have been paid, the board shall issue a final
14 order of discharge three years from the date of parole unless the
15 parolee is on suspended or revoked status at the expiration of the
16 three years.

17 (c) The discharge, regardless of when issued, shall have the effect
18 of restoring all civil rights lost by operation of law upon conviction,
19 and the certification of discharge shall so state.

20 (d) This restoration of civil rights shall not restore the right to
21 receive, possess, own, or transport firearms.

22 (e) The board shall issue a certificate of discharge to the
23 offender in person or by mail to the offender's last known address.

24 (2) The board shall send a copy of every signed certificate of
25 discharge to the auditor for the county in which the offender was
26 sentenced and to the department of corrections. The department shall
27 create and maintain a data base containing the names of all felons who
28 have been issued certificates of discharge, the date of discharge, and
29 the date of conviction and offense.

30 ~~((The board retains the jurisdiction to issue a certificate of~~
31 ~~discharge after the expiration of the prisoner's or parolee's maximum~~
32 ~~statutory sentence. If not earlier granted, the board shall make a~~
33 ~~final order of discharge three years from the date of parole unless the~~
34 ~~parolee is on suspended or revoked status at the expiration of the~~
35 ~~three years. Such discharge, regardless of when issued, shall have the~~
36 ~~effect of restoring all civil rights lost by operation of law upon~~
37 ~~conviction, and the certification of discharge shall so state. This~~

1 ~~restoration of civil rights shall not restore the right to receive,~~
2 ~~possess, own, or transport firearms.))~~

3 (3) The discharge provided for in this section shall be considered
4 as a part of the sentence of the convicted person and shall not in any
5 manner be construed as affecting the powers of the governor to pardon
6 any such person.

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