

ESSB 5288 - H AMD TO H WAYS COMM AMD (H-3253.4/09) **857**

By Representative Pearson

FAILED 4/21/2009

1 On page 2, line 12, after "~~offender~~)" strike all material through
2 "9A.44.130." on line 30 and insert "(a) The department shall supervise
3 every offender convicted of a misdemeanor or gross misdemeanor offense
4 who is sentenced to probation in superior court, pursuant to RCW
5 9.92.060, 9.95.204, or 9.95.210, for an offense included in (b) of
6 this subsection.

7 (b) The superior court shall order probation for:

8 (i) Offenders convicted of fourth degree assault, violation of a
9 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
10 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
11 and who also have a prior conviction for one or more of the following:

12 (A) A violent offense

13 (B) A sex offense;

14 (C) A crime against a person as provided in RCW 9.94A.411;

15 (D) Fourth degree assault; or

16 (E) Violation of a domestic violence court order;

17 (ii) Offenders convicted of:

18 (A) Sexual misconduct with a minor second degree;

19 (B) Custodial sexual misconduct second degree;

20 (C) Communication with a minor for immoral purposes; and

21 (D) Failure to register pursuant to RCW 9A.44.130;

22 (iii) An offense included in (b)(i) where the offender does not
23 have a prior conviction or the offender has a prior conviction other
24 than one of those identified in (b)(i)(A) through (b)(i)(E) and the
25 offender's risk assessment, conducted pursuant to subsection (5) of
26 this section, places the offender in one of the two highest risk
27 categories; and

1 (iv) An offense not included in (b)(i) or (b)(ii) where the
2 offender's risk assessment, conducted pursuant to subsection (5) of
3 this section, places the offender in one of the two highest risk
4 categories."

5
6 On page 3, line 18, after "for" strike "every" and insert ":
7 (a) Every"

8
9 On page 3, line 20, after "section" insert the following: "; and
10 (b) Every offender sentenced for a misdemeanor or gross
11 misdemeanor in superior court pursuant to subsections (1)(b)(iii) and
12 (1)(b)(iv) of this section"

13
14 On page 4, beginning on line 22, after "offender))" strike all
15 material through "9A.44.130." on page 5, line 2 and insert "(a) The
16 department shall supervise every offender convicted of a misdemeanor
17 or gross misdemeanor offense who is sentenced to probation in superior
18 court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense
19 included in (b) of this subsection.

20 (b) The superior court shall order probation for:

21 (i) Offenders convicted of fourth degree assault, violation of a
22 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
23 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
24 and who also have a prior conviction for one or more of the following:

25 (A) A violent offense

26 (B) A sex offense;

27 (C) A crime against a person as provided in RCW 9.94A.411;

28 (D) Fourth degree assault; or

29 (E) Violation of a domestic violence court order;

30 (ii) Offenders convicted of:

31 (A) Sexual misconduct with a minor second degree;

32 (B) Custodial sexual misconduct second degree;

33 (C) Communication with a minor for immoral purposes; and

34 (D) Failure to register pursuant to RCW 9A.44.130;

1 (iii) An offense included in (b)(i) where the offender does not
2 have a prior conviction or the offender has a prior conviction other
3 than one of those identified in (b)(i)(A) through (b)(i)(E) and the
4 offender's risk assessment, conducted pursuant to subsection (5) of
5 this section, places the offender in one of the two highest risk
6 categories; and

7 (iv) An offense not included in (b)(i) or (b)(ii) where the
8 offender's risk assessment, conducted pursuant to subsection (5) of
9 this section, places the offender in one of the two highest risk
10 categories."

11
12 On page 5, line 27, after "for" strike "every" and insert":
13 (a) Every"

14
15 On page 5, line 29, after "section" insert the following:"; and
16 (b) Every offender sentenced for a misdemeanor or gross
17 misdemeanor in superior court pursuant to subsections (1)(b)(iii) and
18 (1)(b)(iv) of this section"

19
20 On page 5, after line 29, insert the following:

21
22 "**Sec. 3.** RCW 9.94A.500 and 2008 c 231 s 2 are each amended to
23 read as follows:

24 (1) Before imposing a sentence upon a defendant, the court shall
25 conduct a sentencing hearing. The sentencing hearing shall be held
26 within forty court days following conviction. Upon the motion of
27 either party for good cause shown, or on its own motion, the court may
28 extend the time period for conducting the sentencing hearing.

29 Except in cases where the defendant shall be sentenced to a term
30 of total confinement for life without the possibility of release or,
31 when authorized by RCW 10.95.030 for the crime of aggravated murder in
32 the first degree, sentenced to death, the court may order the
33 department to complete a risk assessment report. The court shall,
34 however, at the time of plea or conviction order the department to

1 complete a risk assessment report for offenders sentenced pursuant to
2 section 1(1)(b)(iii) and (iv) and section 2(1)(b)(iii) and (iv) of
3 this act. If available before sentencing, the report shall be
4 provided to the court.

5 Unless specifically waived by the court, the court shall order the
6 department to complete a chemical dependency screening report before
7 imposing a sentence upon a defendant who has been convicted of a
8 violation of the uniform controlled substances act under chapter 69.50
9 RCW, a criminal solicitation to commit such a violation under chapter
10 9A.28 RCW, or any felony where the court finds that the offender has a
11 chemical dependency that has contributed to his or her offense. In
12 addition, the court shall, at the time of plea or conviction, order
13 the department to complete a presentence report before imposing a
14 sentence upon a defendant who has been convicted of a felony sexual
15 offense. The department of corrections shall give priority to
16 presentence investigations for sexual offenders. If the court
17 determines that the defendant may be a mentally ill person as defined
18 in RCW 71.24.025, although the defendant has not established that at
19 the time of the crime he or she lacked the capacity to commit the
20 crime, was incompetent to commit the crime, or was insane at the time
21 of the crime, the court shall order the department to complete a
22 presentence report before imposing a sentence.

23 The court shall consider the risk assessment report and
24 presentence reports, if any, including any victim impact statement and
25 criminal history, and allow arguments from the prosecutor, the defense
26 counsel, the offender, the victim, the survivor of the victim, or a
27 representative of the victim or survivor, and an investigative law
28 enforcement officer as to the sentence to be imposed.

29 A criminal history summary relating to the defendant from the
30 prosecuting authority or from a state, federal, or foreign
31 governmental agency shall be prima facie evidence of the existence and
32 validity of the convictions listed therein. If the court is satisfied
33 by a preponderance of the evidence that the defendant has a criminal
34 history, the court shall specify the convictions it has found to

1 exist. All of this information shall be part of the record. Copies
2 of all risk assessment reports and presentence reports presented to
3 the sentencing court and all written findings of facts and conclusions
4 of law as to sentencing entered by the court shall be sent to the
5 department by the clerk of the court at the conclusion of the
6 sentencing and shall accompany the offender if the offender is
7 committed to the custody of the department. Court clerks shall
8 provide, without charge, certified copies of documents relating to
9 criminal convictions requested by prosecuting attorneys.

10 (2) To prevent wrongful disclosure of information related to
11 mental health services, as defined in RCW 71.05.445 and 71.34.345, a
12 court may take only those steps necessary during a sentencing hearing
13 or any hearing in which the department presents information related to
14 mental health services to the court. The steps may be taken on motion
15 of the defendant, the prosecuting attorney, or on the court's own
16 motion. The court may seal the portion of the record relating to
17 information relating to mental health services, exclude the public
18 from the hearing during presentation or discussion of information
19 relating to mental health services, or grant other relief to achieve
20 the result intended by this subsection, but nothing in this subsection
21 shall be construed to prevent the subsequent release of information
22 related to mental health services as authorized by RCW 71.05.445,
23 71.34.345, or 72.09.585. Any person who otherwise is permitted to
24 attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be
25 excluded from the hearing solely because the department intends to
26 disclose or discloses information related to mental health services."

27
28 Renumber remaining sections consecutively and correct any internal
29 references accordingly.

30
31 On page 46, after line 17, insert the following:

32
33 "NEW SECTION. Sec. 15. (1) The state of Washington, the department
34 of corrections and its employees, community corrections officers, and

1 volunteers who assist community corrections officers are not liable
2 for any harm caused by the actions of a felony or misdemeanor
3 offender who is under the department's supervision under this act.

4 (2) The state of Washington, the department of corrections and its
5 employees, community corrections officers, and volunteers who assist
6 community corrections officers are not liable for civil damages
7 resulting from any act or omission in the rendering of activities
8 under this act unless the act or omission constitutes gross
9 negligence. For the purposes of this section, "volunteers" is defined
10 according to RCW 51.12.035."
11

12 Renumber remaining sections consecutively and correct any internal
13 references accordingly.
14

15 Correct the title.
16

17 **EFFECT:** (1) Requires the Department of Corrections (DOC) to
18 supervise misdemeanor offenders who are sentenced in Superior Court
19 for either Assault 4th Degree or Domestic Violence Violation of a
20 Court Order, but who have no prior conviction or whose prior
21 conviction is not a sex offense, violent offense, crime against a
22 person, a prior Assault 4th Degree or Domestic Violence Violation of a
23 Court Order and whose risk assessment places them in one of the two
24 highest risk categories.
25

26 (2) Requires the DOC to supervise misdemeanor offenders who are
27 sentenced for an offense other than Assault 4th Degree or Domestic
28 Violence Violation of a Court Order and whose risk assessment places
29 them in one of the two highest risk categories.
30

31 (3) Requires the Court, prior to sentencing, to order the
32 department to conduct a risk assessment for misdemeanor offenders
33 sentenced in Superior Court for offenses other than Assault 4th Degree
34 or Domestic Violence Violation of a Court Order, or where the offender

1 is sentenced for those offenses but the offender has no prior offenses
2 or has prior offenses that are not a sex offense, violence offense,
3 crime against a person, Assault 4th Degree, or Domestic Violence
4 Violation of a Court Order.

5

6 (4) Gives the DOC immunity from liability for harm caused by the
7 offenders that it supervises and from liability for civil damages for
8 any act or omission by the DOC or its personnel in carrying out their
9 supervision responsibilities unless an act or omission constitutes
10 gross negligence.

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