

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1281

61st Legislature
2009 Regular Session

Passed by the House February 27, 2009
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 7, 2009
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1281** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1281

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Representatives Hurst, Pearson, Appleton, O'Brien, Goodman, Orcutt, Morrell, Ormsby, Simpson, and Orwall

Read first time 01/16/09. Referred to Committee on Human Services.

1 AN ACT Relating to the rights of victims, survivors, and witnesses
2 of crimes to be heard before the indeterminate sentence review board
3 and clemency and pardons board; amending RCW 9.95.420, 9.95.420,
4 9.94A.885, and 7.69.030; adding a new section to chapter 7.69 RCW;
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.69 RCW
8 to read as follows:

9 (1) The legislature recognizes the significant concerns that many
10 victims, survivors of victims, and witnesses of crimes have when
11 offenders are considered for postsentence release from confinement.
12 Therefore, it is the intent of the legislature to ensure that victims,
13 survivors of victims, and witnesses of crimes are afforded the
14 opportunity to make a statement that will be considered prior to the
15 granting of postsentence release from confinement for any offender
16 under the jurisdiction of the indeterminate sentence review board or
17 its successor, or by the governor regarding an application for pardon
18 or commutation of sentence.

1 (2) Victims, survivors of victims, and witnesses of crimes have the
2 following rights:

3 (a) With respect to victims, survivors of victims, and witnesses of
4 crimes, to present a statement to the indeterminate sentence review
5 board or its successor, in person or by representation, via audio or
6 videotape or other electronic means, or in writing, prior to the
7 granting of parole or community custody release for any offender under
8 the board's jurisdiction.

9 (b) With respect to victims and survivors of victims, to present a
10 statement to the clemency and pardons board in person, via audio or
11 videotape or other electronic means, or in writing, at any hearing
12 conducted regarding an application for pardon or commutation of
13 sentence.

14 **Sec. 2.** RCW 9.95.420 and 2007 c 363 s 2 are each amended to read
15 as follows:

16 (1)(a) Except as provided in (c) of this subsection, before the
17 expiration of the minimum term, as part of the end of sentence review
18 process under RCW 72.09.340, 72.09.345, and where appropriate,
19 72.09.370, the department shall conduct, and the offender shall
20 participate in, an examination of the offender, incorporating
21 methodologies that are recognized by experts in the prediction of
22 sexual dangerousness, and including a prediction of the probability
23 that the offender will engage in sex offenses if released.

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

26 (c) If at the time the sentence is imposed by the superior court
27 the offender's minimum term has expired or will expire within one
28 hundred twenty days of the sentencing hearing, the department shall
29 conduct, within ninety days of the offender's arrival at a department
30 of corrections facility, and the offender shall participate in, an
31 examination of the offender, incorporating methodologies that are
32 recognized by experts in the prediction of sexual dangerousness, and
33 including a prediction of the probability that the offender will engage
34 in sex offenses if released.

35 (2) The board shall impose the conditions and instructions provided
36 for in RCW 9.94A.720. The board shall consider the department's

1 recommendations and may impose conditions in addition to those
2 recommended by the department. The board may impose or modify
3 conditions of community custody following notice to the offender.

4 (3)(a) Except as provided in (b) of this subsection, no later than
5 ninety days before expiration of the minimum term, but after the board
6 receives the results from the end of sentence review process and the
7 recommendations for additional or modified conditions of community
8 custody from the department, the board shall conduct a hearing to
9 determine whether it is more likely than not that the offender will
10 engage in sex offenses if released on conditions to be set by the
11 board. The board may consider an offender's failure to participate in
12 an evaluation under subsection (1) of this section in determining
13 whether to release the offender. The board shall order the offender
14 released, under such affirmative and other conditions as the board
15 determines appropriate, unless the board determines by a preponderance
16 of the evidence that, despite such conditions, it is more likely than
17 not that the offender will commit sex offenses if released. If the
18 board does not order the offender released, the board shall establish
19 a new minimum term as provided in RCW 9.95.011.

20 (b) If at the time the offender's minimum term has expired or will
21 expire within one hundred twenty days of the offender's arrival at a
22 department of correction's facility, then no later than one hundred
23 twenty days after the offender's arrival at a department of corrections
24 facility, but after the board receives the results from the end of
25 sentence review process and the recommendations for additional or
26 modified conditions of community custody from the department, the board
27 shall conduct a hearing to determine whether it is more likely than not
28 that the offender will engage in sex offenses if released on conditions
29 to be set by the board. The board may consider an offender's failure
30 to participate in an evaluation under subsection (1) of this section in
31 determining whether to release the offender. The board shall order the
32 offender released, under such affirmative and other conditions as the
33 board determines appropriate, unless the board determines by a
34 preponderance of the evidence that, despite such conditions, it is more
35 likely than not that the offender will commit sex offenses if released.
36 If the board does not order the offender released, the board shall
37 establish a new minimum term as provided in RCW 9.95.011.

1 (4) In a hearing conducted under subsection (3) of this section,
2 the board shall provide opportunities for the victims of any crimes for
3 which the offender has been convicted to present (~~oral, video,~~
4 ~~written, or in person testimony to the board~~) statements as set forth
5 in section 1 of this act. The procedures for victim input shall be
6 developed by rule. To facilitate victim involvement, county
7 prosecutor's offices shall ensure that any victim impact statements and
8 known contact information for victims of record are forwarded as part
9 of the judgment and sentence.

10 **Sec. 3.** RCW 9.95.420 and 2008 c 231 s 44 are each amended to read
11 as follows:

12 (1)(a) Except as provided in (c) of this subsection, before the
13 expiration of the minimum term, as part of the end of sentence review
14 process under RCW 72.09.340, 72.09.345, and where appropriate,
15 72.09.370, the department shall conduct, and the offender shall
16 participate in, an examination of the offender, incorporating
17 methodologies that are recognized by experts in the prediction of
18 sexual dangerousness, and including a prediction of the probability
19 that the offender will engage in sex offenses if released.

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

22 (c) If at the time the sentence is imposed by the superior court
23 the offender's minimum term has expired or will expire within one
24 hundred twenty days of the sentencing hearing, the department shall
25 conduct, within ninety days of the offender's arrival at a department
26 of corrections facility, and the offender shall participate in, an
27 examination of the offender, incorporating methodologies that are
28 recognized by experts in the prediction of sexual dangerousness, and
29 including a prediction of the probability that the offender will engage
30 in sex offenses if released.

31 (2) The board shall impose the conditions and instructions provided
32 for in RCW 9.94A.704. The board shall consider the department's
33 recommendations and may impose conditions in addition to those
34 recommended by the department. The board may impose or modify
35 conditions of community custody following notice to the offender.

36 (3)(a) Except as provided in (b) of this subsection, no later than
37 ninety days before expiration of the minimum term, but after the board

1 receives the results from the end of sentence review process and the
2 recommendations for additional or modified conditions of community
3 custody from the department, the board shall conduct a hearing to
4 determine whether it is more likely than not that the offender will
5 engage in sex offenses if released on conditions to be set by the
6 board. The board may consider an offender's failure to participate in
7 an evaluation under subsection (1) of this section in determining
8 whether to release the offender. The board shall order the offender
9 released, under such affirmative and other conditions as the board
10 determines appropriate, unless the board determines by a preponderance
11 of the evidence that, despite such conditions, it is more likely than
12 not that the offender will commit sex offenses if released. If the
13 board does not order the offender released, the board shall establish
14 a new minimum term as provided in RCW 9.95.011.

15 (b) If at the time the offender's minimum term has expired or will
16 expire within one hundred twenty days of the offender's arrival at a
17 department of correction's facility, then no later than one hundred
18 twenty days after the offender's arrival at a department of corrections
19 facility, but after the board receives the results from the end of
20 sentence review process and the recommendations for additional or
21 modified conditions of community custody from the department, the board
22 shall conduct a hearing to determine whether it is more likely than not
23 that the offender will engage in sex offenses if released on conditions
24 to be set by the board. The board may consider an offender's failure
25 to participate in an evaluation under subsection (1) of this section in
26 determining whether to release the offender. The board shall order the
27 offender released, under such affirmative and other conditions as the
28 board determines appropriate, unless the board determines by a
29 preponderance of the evidence that, despite such conditions, it is more
30 likely than not that the offender will commit sex offenses if released.
31 If the board does not order the offender released, the board shall
32 establish a new minimum term as provided in RCW 9.95.011.

33 (4) In a hearing conducted under subsection (3) of this section,
34 the board shall provide opportunities for the victims of any crimes for
35 which the offender has been convicted to present (~~oral, video,~~
36 ~~written, or in person testimony to the board~~) statements as set forth
37 in section 1 of this act. The procedures for victim input shall be
38 developed by rule. To facilitate victim involvement, county

1 prosecutor's offices shall ensure that any victim impact statements and
2 known contact information for victims of record are forwarded as part
3 of the judgment and sentence.

4 **Sec. 4.** RCW 9.94A.885 and 1999 c 323 s 3 are each amended to read
5 as follows:

6 (1) The clemency and pardons board shall receive petitions from
7 individuals, organizations, and the department for review and
8 commutation of sentences and pardoning of offenders in extraordinary
9 cases, and shall make recommendations thereon to the governor.

10 (2) The board shall receive petitions from individuals or
11 organizations for the restoration of civil rights lost by operation of
12 state law as a result of convictions for federal offenses or out-of-
13 state felonies. The board may issue certificates of restoration
14 limited to the elective rights to vote and to engage in political
15 office. Any certifications granted by the board must be filed with the
16 secretary of state to be effective. In all other cases, the board
17 shall make recommendations to the governor.

18 (3) The board shall not recommend that the governor grant clemency
19 under subsection (1) of this section until a public hearing has been
20 held on the petition. The prosecuting attorney of the county where the
21 conviction was obtained shall be notified at least thirty days prior to
22 the scheduled hearing that a petition has been filed and the date and
23 place at which the hearing on the petition will be held. The board may
24 waive the thirty-day notice requirement in cases where it determines
25 that waiver is necessary to permit timely action on the petition. A
26 copy of the petition shall be sent to the prosecuting attorney. The
27 prosecuting attorney shall make reasonable efforts to notify victims,
28 survivors of victims, witnesses, and the law enforcement agency or
29 agencies that conducted the investigation, of the date and place of the
30 hearing. Information regarding victims, survivors of victims, or
31 witnesses receiving this notice are confidential and shall not be
32 available to the offender. The board shall consider (~~written, oral,~~
33 ~~audio, or videotaped statements regarding the petition received,~~
34 ~~personally or by representation, from the individuals who receive~~
35 ~~notice pursuant to this section)) statements presented as set forth in
36 section 1 of this act. This subsection is intended solely for the~~

1 guidance of the board. Nothing in this section is intended or may be
2 relied upon to create a right or benefit, substantive or procedural,
3 enforceable at law by any person.

4 **Sec. 5.** RCW 7.69.030 and 2008 c 286 s 16 are each amended to read
5 as follows:

6 There shall be a reasonable effort made to ensure that victims,
7 survivors of victims, and witnesses of crimes have the following
8 rights, which apply to any criminal court and/or juvenile court
9 proceeding:

10 (1) With respect to victims of violent or sex crimes, to receive,
11 at the time of reporting the crime to law enforcement officials, a
12 written statement of the rights of crime victims as provided in this
13 chapter. The written statement shall include the name, address, and
14 telephone number of a county or local crime victim/witness program, if
15 such a crime victim/witness program exists in the county;

16 (2) To be informed by local law enforcement agencies or the
17 prosecuting attorney of the final disposition of the case in which the
18 victim, survivor, or witness is involved;

19 (3) To be notified by the party who issued the subpoena that a
20 court proceeding to which they have been subpoenaed will not occur as
21 scheduled, in order to save the person an unnecessary trip to court;

22 (4) To receive protection from harm and threats of harm arising out
23 of cooperation with law enforcement and prosecution efforts, and to be
24 provided with information as to the level of protection available;

25 (5) To be informed of the procedure to be followed to apply for and
26 receive any witness fees to which they are entitled;

27 (6) To be provided, whenever practical, a secure waiting area
28 during court proceedings that does not require them to be in close
29 proximity to defendants and families or friends of defendants;

30 (7) To have any stolen or other personal property expeditiously
31 returned by law enforcement agencies or the superior court when no
32 longer needed as evidence. When feasible, all such property, except
33 weapons, currency, contraband, property subject to evidentiary
34 analysis, and property of which ownership is disputed, shall be
35 photographed and returned to the owner within ten days of being taken;

36 (8) To be provided with appropriate employer intercession services
37 to ensure that employers of victims, survivors of victims, and

1 witnesses of crime will cooperate with the criminal justice process in
2 order to minimize an employee's loss of pay and other benefits
3 resulting from court appearance;

4 (9) To access to immediate medical assistance and not to be
5 detained for an unreasonable length of time by a law enforcement agency
6 before having such assistance administered. However, an employee of
7 the law enforcement agency may, if necessary, accompany the person to
8 a medical facility to question the person about the criminal incident
9 if the questioning does not hinder the administration of medical
10 assistance. Victims of domestic violence, sexual assault, or stalking,
11 as defined in RCW 49.76.020, shall be notified of their right to
12 reasonable leave from employment under chapter 49.76 RCW;

13 (10) With respect to victims of violent and sex crimes, to have a
14 crime victim advocate from a crime victim/witness program, or any other
15 support person of the victim's choosing, present at any prosecutorial
16 or defense interviews with the victim, and at any judicial proceedings
17 related to criminal acts committed against the victim. This subsection
18 applies if practical and if the presence of the crime victim advocate
19 or support person does not cause any unnecessary delay in the
20 investigation or prosecution of the case. The role of the crime victim
21 advocate is to provide emotional support to the crime victim;

22 (11) With respect to victims and survivors of victims, to be
23 physically present in court during trial, or if subpoenaed to testify,
24 to be scheduled as early as practical in the proceedings in order to be
25 physically present during trial after testifying and not to be excluded
26 solely because they have testified;

27 (12) With respect to victims and survivors of victims, to be
28 informed by the prosecuting attorney of the date, time, and place of
29 the trial and of the sentencing hearing for felony convictions upon
30 request by a victim or survivor;

31 (13) To submit a victim impact statement or report to the court,
32 with the assistance of the prosecuting attorney if requested, which
33 shall be included in all presentence reports and permanently included
34 in the files and records accompanying the offender committed to the
35 custody of a state agency or institution;

36 (14) With respect to victims and survivors of victims, to present
37 a statement personally or by representation, at the sentencing hearing
38 for felony convictions; and

1 (15) With respect to victims and survivors of victims, to entry of
2 an order of restitution by the court in all felony cases, even when the
3 offender is sentenced to confinement, unless extraordinary
4 circumstances exist which make restitution inappropriate in the court's
5 judgment((;and

6 ~~(16) With respect to victims and survivors of victims, to present~~
7 ~~a statement in person, via audio or videotape, in writing or by~~
8 ~~representation at any hearing conducted regarding an application for~~
9 ~~pardon or commutation of sentence)).~~

10 NEW SECTION. **Sec. 6.** Section 2 of this act expires August 1,
11 2009.

12 NEW SECTION. **Sec. 7.** Section 3 of this act takes effect August 1,
13 2009.

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