
SUBSTITUTE HOUSE BILL 2034

State of Washington 62nd Legislature 2011 Regular Session

By House State Government & Tribal Affairs (originally sponsored by Representatives Hudgins, Appleton, Dickerson, Hunt, Ryu, and Goodman)

READ FIRST TIME 04/09/11.

1 AN ACT Relating to the reform and streamlining of the sentencing
2 guidelines commission for the purpose of saving money; amending RCW
3 9.94A.860, 9.94A.480, 13.50.010, 9.94A.74501, 9.94A.855, 9A.52.025,
4 10.98.140, 10.98.160, and 72.66.016; and repealing RCW 13.40.005,
5 9.94A.850, 9.94A.863, 9.94A.8672, 9.94A.8673, 9.94A.8675, and
6 72.09.350.

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

8 NEW SECTION. **Sec. 1.** The following acts or parts of acts are each
9 repealed:

10 (1) RCW 13.40.005 (Juvenile disposition standards commission--
11 Abolished--References to commission--Transfer of powers, duties, and
12 functions) and 1995 c 269 s 301;

13 (2) RCW 9.94A.850 (Sentencing guidelines commission--Established--
14 Powers and duties) and 2009 c 375 s 8, 2009 c 28 s 17, & 2005 c 282 s
15 19;

16 (3) RCW 9.94A.863 (Monetary threshold amounts of property crimes--
17 Review--Report) and 2009 c 431 s 2;

18 (4) RCW 9.94A.8672 (Sex offender policy board--Establishment) and
19 2008 c 249 s 2;

1 (5) RCW 9.94A.8673 (Sex offender policy board--Membership) and 2008
2 c 249 s 3;

3 (6) RCW 9.94A.8675 (Sex offender policy board--Authority) and 2008
4 c 249 s 5; and

5 (7) RCW 72.09.350 (Corrections mental health center--Collaborative
6 arrangement with University of Washington--Services for mentally ill
7 offenders--Annual report to the legislature) and 1993 c 459 s 1.

8 **Sec. 2.** RCW 9.94A.860 and 2001 2nd sp.s. c 12 s 311 are each
9 amended to read as follows:

10 (1) The sentencing guidelines commission is hereby created as
11 provided in this section. Except as provided in RCW 9.94A.875, the
12 commission is advisory only and may only advise the governor and the
13 legislature as deemed necessary by the governor and the legislature.

14 (2) The commission consists of twenty voting members, one of whom
15 the governor shall designate as chairperson. With the exception of ex
16 officio voting members, the voting members of the commission shall be
17 appointed by the governor, or his or her designee, subject to
18 confirmation by the senate.

19 ((+2)) (3) The voting membership consists of the following:

20 (a) The head of the state agency having general responsibility for
21 adult correction programs, as an ex officio member;

22 (b) The director of financial management or designee, as an ex
23 officio member;

24 (c) The chair of the indeterminate sentence review board, as an ex
25 officio member;

26 (d) The head of the state agency, or the agency head's designee,
27 having responsibility for juvenile corrections programs, as an ex
28 officio member;

29 (e) Two prosecuting attorneys;

30 (f) Two attorneys with particular expertise in defense work;

31 (g) Four persons who are superior court judges;

32 (h) One person who is the chief law enforcement officer of a county
33 or city;

34 (i) Four members of the public who are not prosecutors, defense
35 attorneys, judges, or law enforcement officers, one of whom is a victim
36 of crime or a crime victims' advocate;

1 (j) One person who is an elected official of a county government,
2 other than a prosecuting attorney or sheriff;

3 (k) One person who is an elected official of a city government;

4 (l) One person who is an administrator of juvenile court services.

5 In making the appointments, the governor shall endeavor to assure
6 that the commission membership includes adequate representation and
7 expertise relating to both the adult criminal justice system and the
8 juvenile justice system. In making the appointments, the governor
9 shall seek the recommendations of Washington prosecutors in respect to
10 the prosecuting attorney members, of the Washington state bar
11 association in respect to the defense attorney members, of the
12 association of superior court judges in respect to the members who are
13 judges, of the Washington association of sheriffs and police chiefs in
14 respect to the member who is a law enforcement officer, of the
15 Washington state association of counties in respect to the member who
16 is a county official, of the association of Washington cities in
17 respect to the member who is a city official, of the office of crime
18 victims advocacy and other organizations of crime victims in respect to
19 the member who is a victim of crime or a crime victims' advocate, and
20 of the Washington association of juvenile court administrators in
21 respect to the member who is an administrator of juvenile court
22 services.

23 ~~((+3))~~ (4)(a) All voting members of the commission, except ex
24 officio voting members, shall serve terms of three years and until
25 their successors are appointed and confirmed.

26 (b) The governor shall stagger the terms of the members appointed
27 under subsection ~~((+2))~~ (3)(j), (k), and (l) of this section by
28 appointing one of them for a term of one year, one for a term of two
29 years, and one for a term of three years.

30 ~~((+4))~~ (5) The speaker of the house of representatives and the
31 president of the senate may each appoint two nonvoting members to the
32 commission, one from each of the two largest caucuses in each house.
33 The members so appointed shall serve two-year terms, or until they
34 cease to be members of the house from which they were appointed,
35 whichever occurs first.

36 ~~((+5))~~ (6) The members of the commission ~~((shall))~~ may not be
37 reimbursed for travel expenses ~~((as provided in RCW 43.03.050 and~~

1 ~~43.03.060~~). Legislative members (~~shall~~) may not be reimbursed by
2 their respective houses (~~as provided under RCW 44.04.120~~). Members
3 (~~shall be~~) are not compensated (~~in accordance with RCW 43.03.250~~).

4 (7) The commission may meet if a meeting is called by the governor
5 and the legislature and only for such purposes as determined by the
6 governor and the legislature.

7 (8) The administrative office of the courts must serve as a
8 clearinghouse and information center for the collection, preparation,
9 analysis, and dissemination of information on:

10 (a) State and local adult sentencing practices; and

11 (b) Juveniles sentenced as adults.

12 **Sec. 3.** RCW 9.94A.480 and 2002 c 290 s 16 are each amended to read
13 as follows:

14 (1) A current, newly created or reworked judgment and sentence
15 document for each felony sentencing shall record any and all
16 recommended sentencing agreements or plea agreements and the sentences
17 for any and all felony crimes kept as public records under RCW
18 9.94A.475 shall contain the clearly printed name and legal signature of
19 the sentencing judge. The judgment and sentence document as defined in
20 this section shall also provide additional space for the sentencing
21 judge's reasons for going either above or below the presumptive
22 sentence range for any and all felony crimes covered as public records
23 under RCW 9.94A.475. Both the sentencing judge and the prosecuting
24 attorney's office shall each retain or receive a completed copy of each
25 sentencing document as defined in this section for their own records.

26 (2) The (~~sentencing guidelines commission shall~~) administrative
27 office of the courts must be sent a completed copy of the judgment and
28 sentence document upon conviction for each felony sentencing under
29 subsection (1) of this section and shall compile a yearly and
30 cumulative judicial record of each sentencing judge in regards to his
31 or her sentencing practices for any and all felony crimes involving:

32 (a) Any violent offense as defined in this chapter;

33 (b) Any most serious offense as defined in this chapter;

34 (c) Any felony with any deadly weapon special verdict under RCW
35 9.94A.602;

36 (d) Any felony with any deadly weapon enhancements under RCW
37 9.94A.533 (3) or (4), or both; and/or

1 (e) The felony crimes of possession of a machine gun, possessing a
2 stolen firearm, drive-by shooting, theft of a firearm, unlawful
3 possession of a firearm in the first or second degree, and/or use of a
4 machine gun in a felony.

5 (3) The (~~sentencing guidelines commission shall~~) administrative
6 office of the courts must compare each individual judge's sentencing
7 practices to the standard or presumptive sentence range for any and all
8 felony crimes listed in subsection (2) of this section for the
9 appropriate offense level as defined in RCW 9.94A.515 or 9.94A.518,
10 offender score as defined in RCW 9.94A.525, and any applicable deadly
11 weapon enhancements as defined in RCW 9.94A.533 (3) or (4), or both.
12 These comparative records shall be retained and made available to the
13 public for review in a current, newly created or reworked official
14 published document by the (~~sentencing guidelines commission~~)
15 administrative office of the courts.

16 (4) Any and all felony sentences which are either above or below
17 the standard or presumptive sentence range in subsection (3) of this
18 section shall also mark whether the prosecuting attorney in the case
19 also recommended a similar sentence, if any, which was either above or
20 below the presumptive sentence range and shall also indicate if the
21 sentence was in conjunction with an approved alternative sentencing
22 option including a first-time offender waiver, sex offender sentencing
23 alternative, or other prescribed sentencing option.

24 (5) If any completed judgment and sentence document as defined in
25 subsection (1) of this section is not sent to the (~~sentencing~~
26 ~~guidelines commission~~) administrative office of the courts as required
27 in subsection (2) of this section, the (~~sentencing guidelines~~
28 ~~commission shall have~~) administrative office of the courts has the
29 authority and (~~shall~~) must undertake reasonable and necessary steps
30 to assure that all past, current, and future sentencing documents as
31 defined in subsection (1) of this section are received by the
32 (~~sentencing guidelines commission~~) administrative office of the
33 courts.

34 **Sec. 4.** RCW 13.50.010 and 2010 c 150 s 3 are each amended to read
35 as follows:

36 (1) For purposes of this chapter:

1 (a) "Juvenile justice or care agency" means any of the following:
2 Police, diversion units, court, prosecuting attorney, defense attorney,
3 detention center, attorney general, the legislative children's
4 oversight committee, the office of the family and children's ombudsman,
5 the department of social and health services and its contracting
6 agencies, schools; persons or public or private agencies having
7 children committed to their custody; and any placement oversight
8 committee created under RCW 72.05.415;

9 (b) "Official juvenile court file" means the legal file of the
10 juvenile court containing the petition or information, motions,
11 memorandums, briefs, findings of the court, and court orders;

12 (c) "Records" means the official juvenile court file, the social
13 file, and records of any other juvenile justice or care agency in the
14 case;

15 (d) "Social file" means the juvenile court file containing the
16 records and reports of the probation counselor.

17 (2) Each petition or information filed with the court may include
18 only one juvenile and each petition or information shall be filed under
19 a separate docket number. The social file shall be filed separately
20 from the official juvenile court file.

21 (3) It is the duty of any juvenile justice or care agency to
22 maintain accurate records. To this end:

23 (a) The agency may never knowingly record inaccurate information.
24 Any information in records maintained by the department of social and
25 health services relating to a petition filed pursuant to chapter 13.34
26 RCW that is found by the court to be false or inaccurate shall be
27 corrected or expunged from such records by the agency;

28 (b) An agency shall take reasonable steps to assure the security of
29 its records and prevent tampering with them; and

30 (c) An agency shall make reasonable efforts to insure the
31 completeness of its records, including action taken by other agencies
32 with respect to matters in its files.

33 (4) Each juvenile justice or care agency shall implement procedures
34 consistent with the provisions of this chapter to facilitate inquiries
35 concerning records.

36 (5) Any person who has reasonable cause to believe information
37 concerning that person is included in the records of a juvenile justice
38 or care agency and who has been denied access to those records by the

1 agency may make a motion to the court for an order authorizing that
2 person to inspect the juvenile justice or care agency record concerning
3 that person. The court shall grant the motion to examine records
4 unless it finds that in the interests of justice or in the best
5 interests of the juvenile the records or parts of them should remain
6 confidential.

7 (6) A juvenile, or his or her parents, or any person who has
8 reasonable cause to believe information concerning that person is
9 included in the records of a juvenile justice or care agency may make
10 a motion to the court challenging the accuracy of any information
11 concerning the moving party in the record or challenging the continued
12 possession of the record by the agency. If the court grants the
13 motion, it shall order the record or information to be corrected or
14 destroyed.

15 (7) The person making a motion under subsection (5) or (6) of this
16 section shall give reasonable notice of the motion to all parties to
17 the original action and to any agency whose records will be affected by
18 the motion.

19 (8) The court may permit inspection of records by, or release of
20 information to, any clinic, hospital, or agency which has the subject
21 person under care or treatment. The court may also permit inspection
22 by or release to individuals or agencies, including juvenile justice
23 advisory committees of county law and justice councils, engaged in
24 legitimate research for educational, scientific, or public purposes.
25 The court shall release to the (~~sentencing guidelines commission~~)
26 administrative office of the courts records needed for its research and
27 data-gathering functions (~~under RCW 9.94A.850 and other statutes~~).
28 Access to records or information for research purposes shall be
29 permitted only if the anonymity of all persons mentioned in the records
30 or information will be preserved. Each person granted permission to
31 inspect juvenile justice or care agency records for research purposes
32 shall present a notarized statement to the court stating that the names
33 of juveniles and parents will remain confidential.

34 (9) Juvenile detention facilities shall release records to the
35 (~~sentencing guidelines commission under RCW 9.94A.850~~) administrative
36 office of the courts upon request. The commission shall not disclose
37 the names of any juveniles or parents mentioned in the records without
38 the named individual's written permission.

1 (10) Requirements in this chapter relating to the court's authority
2 to compel disclosure shall not apply to the legislative children's
3 oversight committee or the office of the family and children's
4 ombudsman.

5 (11) For the purpose of research only, the administrative office of
6 the courts shall maintain an electronic research copy of all records in
7 the judicial information system related to juveniles. Access to the
8 research copy is restricted to the Washington state center for court
9 research. The Washington state center for court research shall
10 maintain the confidentiality of all confidential records and shall
11 preserve the anonymity of all persons identified in the research copy.
12 The research copy may not be subject to any records retention schedule
13 and must include records destroyed or removed from the judicial
14 information system pursuant to RCW 13.50.050 (17) and (18) and
15 13.50.100(3).

16 (12) The court shall release to the Washington state office of
17 public defense records needed to implement the agency's oversight,
18 technical assistance, and other functions as required by RCW 2.70.020.
19 Access to the records used as a basis for oversight, technical
20 assistance, or other agency functions is restricted to the Washington
21 state office of public defense. The Washington state office of public
22 defense shall maintain the confidentiality of all confidential
23 information included in the records.

24 **Sec. 5.** RCW 9.94A.74501 and 2001 c 35 s 3 are each amended to read
25 as follows:

26 (1) The (~~sentencing guidelines commission shall~~) department of
27 corrections must serve as the state council for interstate adult
28 offender supervision as required under article IV of RCW 9.94A.745, the
29 interstate compact for adult offender supervision. (~~To assist the~~
30 ~~commission in performing its functions as the state council, the~~
31 ~~department of corrections shall provide staffing and support~~
32 ~~services.~~) The (~~commission~~) department of corrections may form a
33 subcommittee, including members representing the legislative, judicial,
34 and executive branches of state government, and victims' groups(~~, and~~
35 ~~the secretary of corrections,~~) to perform the functions of the state
36 council. Any such subcommittee shall include representation of both

1 houses and at least two of the four largest political caucuses in the
2 legislature.

3 (2) The (~~commission,~~) department of corrections or a subcommittee
4 if formed for that purpose, shall:

5 (a) Review department of corrections operations and procedures
6 under RCW 9.94A.745, and recommend policies to the compact
7 administrator, including policies to be pursued in the administrator's
8 capacity as the state's representative on the interstate commission
9 created under article III of RCW 9.94A.745; and

10 (b) Report annually to the legislature on interstate supervision
11 operations and procedures under RCW 9.94A.745, including
12 recommendations for policy changes(~~(; and~~

13 ~~(c) Not later than December 1, 2004, report to the legislature on~~
14 ~~the effectiveness of its functioning as the state council under article~~
15 ~~IV of RCW 9.94A.745, and recommend any legislation it deems~~
16 ~~appropriate)).~~

17 (3) The (~~commission, or a subcommittee if formed for that purpose,~~
18 ~~shall~~) department of corrections must appoint (~~(one of its members,~~
19 ~~or~~) an employee of the (~~(department designated by the secretary))~~
20 department of corrections, or a subcommittee if formed for that purpose
21 shall appoint one of its members, to represent the state at meetings of
22 the interstate commission created under article III of RCW 9.94A.745
23 when the compact administrator cannot attend.

24 **Sec. 6.** RCW 9.94A.855 and 2005 c 282 s 20 are each amended to read
25 as follows:

26 The (~~(commission shall)~~) administrative office of the courts must
27 appoint a research staff of sufficient size and with sufficient
28 resources to accomplish its duties. The (~~(commission))~~ administrative
29 office of the courts may request from (~~(the office of financial~~
30 ~~management, the indeterminate sentence review board, the administrative~~
31 ~~office of the courts,~~) the department of corrections(~~(,)~~) and the
32 department of social and health services such data, information, and
33 data processing assistance as it may need to accomplish its duties, and
34 such services shall be provided without cost to the (~~(commission))~~
35 administrative office of the courts. (~~(The commission shall adopt its~~
36 ~~own bylaws.~~

1 ~~The salary for a full-time executive officer, if any, shall be~~
2 ~~fixed by the governor pursuant to RCW 43.03.040.)~~)

3 **Sec. 7.** RCW 9A.52.025 and 1989 2nd ex.s. c 1 s 1 are each amended
4 to read as follows:

5 (1) A person is guilty of residential burglary if, with intent to
6 commit a crime against a person or property therein, the person enters
7 or remains unlawfully in a dwelling other than a vehicle.

8 (2) Residential burglary is a class B felony. In establishing
9 sentencing guidelines and disposition standards, ~~((the sentencing~~
10 ~~guidelines commission and the juvenile disposition standards commission~~
11 ~~shall consider)) residential burglary ((as)) is to be considered a more~~
12 serious offense than second degree burglary.

13 **Sec. 8.** RCW 10.98.140 and 1987 c 462 s 4 are each amended to read
14 as follows:

15 (1) The section, the department, and the office of financial
16 management shall be the primary sources of information for criminal
17 justice forecasting. The information maintained by these agencies
18 shall be complete, accurate, and sufficiently timely to support state
19 criminal justice forecasting.

20 (2) The office of financial management shall be the official state
21 agency for the sentenced felon jail forecast. This forecast shall
22 provide at least a six-year projection and shall be published by
23 December 1 of every even-numbered year beginning with 1986. The office
24 of financial management shall seek advice regarding the assumptions in
25 the forecast from criminal justice agencies and associations.

26 (3) The ~~((sentencing guidelines commission shall))~~ administrative
27 office of the courts must keep records on all sentencings above or
28 below the standard range defined by chapter 9.94A RCW. As a minimum,
29 the records shall include the name of the offender, the crimes for
30 which the offender was sentenced, the name and county of the sentencing
31 judge, and the deviation from the standard range. Such records shall
32 be made available to public officials upon request.

33 **Sec. 9.** RCW 10.98.160 and 2005 c 282 s 25 are each amended to read
34 as follows:

35 In the development and modification of the procedures, definitions,

1 and reporting capabilities of the section, the department, the office
2 of financial management, and the responsible agencies and persons shall
3 consider the needs of other criminal justice agencies such as the
4 administrative office of the courts, local law enforcement agencies,
5 local jails, (~~the sentencing guidelines commission,~~) the
6 indeterminate sentence review board, the clemency board, prosecuting
7 attorneys, and affected state agencies such as the office of financial
8 management and legislative committees dealing with criminal justice
9 issues. The Washington integrated justice information board shall
10 review and provide recommendations to state justice agencies and the
11 courts for development and modification of the statewide justice
12 information network.

13 **Sec. 10.** RCW 72.66.016 and 1983 c 255 s 8 are each amended to read
14 as follows:

15 (1) A furlough shall not be granted to a resident if the furlough
16 would commence prior to the time the resident has served the minimum
17 amounts of time provided under this section:

18 (a) If his or her minimum term of imprisonment is longer than
19 twelve months, he or she shall have served at least six months of the
20 term;

21 (b) If his or her minimum term of imprisonment is less than twelve
22 months, he or she shall have served at least ninety days and shall have
23 no longer than six months left to serve on his or her minimum term;

24 (c) If he or she is serving a mandatory minimum term of
25 confinement, he or she shall have served all but the last six months of
26 such term.

27 (2) A person convicted and sentenced for a violent offense as
28 defined in RCW 9.94A.030 is not eligible for furlough until the person
29 has served at least one-half of the minimum term as established by the
30 (~~board of prison terms and paroles or the sentencing guidelines~~
31 ~~commission~~) indeterminate sentence review board.

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