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SENATE BILL 5708

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Kline, Hargrove, Darneille, Nelson, Kohl-Welles, and Keiser

Read first time 02/11/13. Referred to Committee on Law & Justice.

1            AN ACT Relating to persistent offenders; amending RCW 9.94A.501,  
2            9.94A.570, and 9.95.435; adding a new section to chapter 9.94A RCW;  
3            adding a new section to chapter 9.95 RCW; and prescribing penalties.

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

5            **Sec. 1.** RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each amended  
6            to read as follows:

7            (1) The department shall supervise the following offenders who are  
8            sentenced to probation in superior court, pursuant to RCW 9.92.060,  
9            9.95.204, or 9.95.210:

10            (a) Offenders convicted of:

11            (i) Sexual misconduct with a minor second degree;

12            (ii) Custodial sexual misconduct second degree;

13            (iii) Communication with a minor for immoral purposes; and

14            (iv) Violation of RCW 9A.44.132(2) (failure to register); and

15            (b) Offenders who have:

16            (i) A current conviction for a repetitive domestic violence offense

17            where domestic violence has been plead and proven after August 1, 2011;

18            and

1 (ii) A prior conviction for a repetitive domestic violence offense  
2 or domestic violence felony offense where domestic violence has been  
3 plead and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
5 department pursuant to this section shall be placed on community  
6 custody.

7 (3) The department shall supervise every felony offender sentenced  
8 to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk  
9 assessment classifies the offender as one who is at a high risk to  
10 reoffend.

11 (4) Notwithstanding any other provision of this section, the  
12 department shall supervise an offender sentenced to community custody  
13 regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious violent  
15 offense and was sentenced to a term of community custody pursuant to  
16 RCW 9.94A.701, 9.94A.702, or 9.94A.507;

17 (b) Has been identified by the department as a dangerous mentally  
18 ill offender pursuant to RCW 72.09.370;

19 (c) Has an indeterminate sentence and is subject to parole pursuant  
20 to RCW 9.95.017;

21 (d) Has a current conviction for violating RCW 9A.44.132(1)  
22 (failure to register) and was sentenced to a term of community custody  
23 pursuant to RCW 9.94A.701;

24 (e) Has a current conviction for a domestic violence felony offense  
25 where domestic violence has been plead and proven after August 1, 2011,  
26 and a prior conviction for a repetitive domestic violence offense or  
27 domestic violence felony offense where domestic violence has been plead  
28 and proven after August 1, 2011;

29 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or  
30 9.94A.670; (~~(or)~~)

31 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

32 (h) Has been released by the indeterminate sentence review board  
33 pursuant to section 4 of this act.

34 (5) The department is not authorized to, and may not, supervise any  
35 offender sentenced to a term of community custody or any probationer  
36 unless the offender or probationer is one for whom supervision is  
37 required under this section or RCW 9.94A.5011.

1 (6) The department shall conduct a risk assessment for every felony  
2 offender sentenced to a term of community custody who may be subject to  
3 supervision under this section or RCW 9.94A.5011.

4 **Sec. 2.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read  
5 as follows:

6 (1) Notwithstanding the statutory maximum sentence or any other  
7 provision of this chapter and except as provided in subsection (2) of  
8 this section, a persistent offender shall be sentenced to a term of  
9 total confinement for life without the possibility of release or, when  
10 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
11 first degree, sentenced to death. In addition, no offender subject to  
12 this section may be eligible for community custody, earned release  
13 time, furlough, home detention, partial confinement, work crew, work  
14 release, or any other form of release as defined under RCW 9.94A.728  
15 ~~((1))~~ (2), (3), ~~((4), (6))~~ (5), (7), and (8), ~~((or (9)))~~ or any  
16 other form of authorized leave from a correctional facility while not  
17 in the direct custody of a corrections officer or officers, except:

18 ~~((1))~~ (a) In the case of an offender in need of emergency medical  
19 treatment; ~~((or (2)))~~

20 (b) For the purpose of commitment to an inpatient treatment  
21 facility in the case of an offender convicted of the crime of rape in  
22 the first degree; or

23 (c) When authorized under sections 3 and 4 of this act and RCW  
24 9.95.435.

25 (2)(a) A persistent offender shall be sentenced under this  
26 subsection if the persistent offender does not have: (i) A prior or  
27 current conviction for a class A felony, assault in the second degree,  
28 or a sex offense; (ii) a federal or out-of-state conviction for an  
29 offense that under the laws of this state would be considered a class  
30 A felony, assault in the second degree, or a sex offense; (iii) a prior  
31 or current conviction with a deadly weapon verdict under RCW 9.94A.825  
32 or 9.95.015; (iv) a federal or out-of-state conviction for which the  
33 offender would be required to register as a sex offender while residing  
34 in the state of conviction; (v) a federal or out-of-state conviction  
35 that included a finding, whether as an element of the offense or for  
36 the purpose of imposing a sentencing enhancement, that offender was  
37 armed with a deadly weapon, with a dangerous weapon, or with a firearm,

1 as those terms are defined in the jurisdiction of conviction; or (vi)  
2 a federal or out-of-state conviction for an offense for which the  
3 sentencing court imposed a sentence of incarceration, supervision, or  
4 probation, or a combination thereof, of ten or more years.

5 (b) Upon a finding that the persistent offender is subject to  
6 sentencing under (a) of this subsection, the court shall impose a  
7 sentence to a maximum term and a minimum term. The maximum term shall  
8 consist of a maximum sentence of life without the possibility of early  
9 release. The minimum term shall consist of the greater of fifteen  
10 years, the high end of the standard range for the current offense, or  
11 an exceptional sentence above the standard range pursuant to RCW  
12 9.94A.535. An offender serving a term of confinement under this  
13 subsection is not eligible for earned early release or any reduction in  
14 the minimum term imposed by the court.

15 (c) When imposing sentence under (b) of this subsection, the court  
16 shall, in addition to the other terms of the sentence, sentence the  
17 offender to community custody under the supervision of the department  
18 and the authority of the board for any period of time the person is  
19 released from total confinement. As part of any sentence, the court  
20 shall also require the offender to comply with any conditions imposed  
21 by the board under chapter 9.95 RCW. After the offender has served the  
22 mandatory minimum term in total confinement without reduction, the  
23 board shall have the authority to conditionally release the offender  
24 pursuant to section 4 of this act.

25 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW  
26 to read as follows:

27 The board shall have jurisdiction over any offender in custody who:  
28 (1) Was sentenced as a persistent offender prior to the effective date  
29 of this section; and (2) does not have: (i) A prior or current  
30 conviction for a class A felony, assault in the second degree, or a sex  
31 offense; (ii) a federal or out-of-state conviction for an offense that  
32 under the laws of this state would be considered a class A felony,  
33 assault in the second degree, or a sex offense; (iii) a prior or  
34 current conviction with a deadly weapon verdict under RCW 9.94A.825 or  
35 9.95.015; (iv) a federal or out-of-state conviction for which the  
36 offender would be required to register as a sex offender while residing  
37 in the state of conviction; (v) a federal or out-of-state conviction

1 that included a finding, whether as an element of the offense or for  
2 the purpose of imposing a sentencing enhancement, that offender was  
3 armed with a deadly weapon, with a dangerous weapon, or with a firearm,  
4 as those terms are defined in the jurisdiction of conviction; or (vi)  
5 a federal or out-of-state conviction for an offense for which the  
6 sentencing court imposed a sentence of incarceration, supervision, or  
7 probation, or a combination thereof, of ten or more years.  
8 Notwithstanding the terms of the judgment and sentence, after such an  
9 offender has served fifteen years in total confinement without  
10 reduction under sentence as a persistent offender, the board shall have  
11 the authority to grant conditional release pursuant to section 4 of  
12 this act. The board shall impose conditions of community custody  
13 consistent with RCW 9.94A.703. The offender shall be under the  
14 supervision of the department and the authority of the board for any  
15 period of time the person is released from total confinement before the  
16 expiration of the maximum sentence.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.95 RCW  
18 to read as follows:

19 (1) The board shall not release a persistent offender pursuant to  
20 section 3 of this act unless in its opinion his or her rehabilitation  
21 has been completed and he or she is a fit subject for release. The  
22 board shall start with the presumption that the offender is to remain  
23 in total confinement for the maximum sentence of life. The offender  
24 may file his or her petition in writing with the board anytime after he  
25 or she has served the minimal sentence as defined in RCW  
26 9.94A.570(2)(b). The offender must prove by clear and convincing  
27 evidence that his or her rehabilitation is complete and that he or she  
28 is fit for release. The board must then find by clear and convincing  
29 evidence that the offender has shown that he or she is completely  
30 rehabilitated and is fit for release. The board must document its  
31 decision in a report to the secretary. Upon denial of an offender's  
32 petition by the board, the offender shall wait a minimum term, as set  
33 by the board, to appear in front of the board for a subsequent release  
34 hearing. The board shall set a minimum term, not to exceed five years  
35 from the date on which the petition was denied, by which the board must  
36 schedule a subsequent release hearing. The offender is not required to  
37 submit a new petition for subsequent release hearings.

1 (2) Upon receipt of an offender's petition for release under this  
2 section, the board shall make all reasonable efforts to notify by any  
3 reasonable means any of the offender's victims for those offenses that  
4 qualified the offender as a persistent offender. The board shall  
5 provide notification to the victim at least thirty days prior to any  
6 scheduled release hearing in which the offender's petition shall be  
7 heard by the board so that the victim has the opportunity to provide  
8 his or her input to the board on the issue of the offender's release.  
9 The board shall consider any input provided by the victim regarding the  
10 offender's petition.

11 As part of the board's reasonable efforts to notify the victim in  
12 writing of the offender's pending petition, the board shall provide  
13 notification in writing of the offender's petition to the prosecuting  
14 attorney for the county in which the offender was convicted of his or  
15 her most recent most serious offense. The board shall provide notice  
16 to the prosecuting attorney no later than thirty days prior to any  
17 scheduled release hearing by the board.

18 (3) Once the initial petition seeking release under this section  
19 has been filed by the offender, the department shall conduct, and the  
20 offender shall participate in, an examination of the offender prior to  
21 each release hearing. The department shall complete an examination  
22 within ninety days of receipt of the offender's petition, or at least  
23 ninety days prior to any subsequently scheduled release hearings, and  
24 provide the evaluation to the board for review. The board may consider  
25 an offender's failure to participate in the examination in its  
26 determination as to whether the offender should be released.

27 (4) If conditional release is granted, the board shall retain  
28 jurisdiction for the remainder of the offender's life with the power to  
29 revoke the conditional release if the offender violates the imposed  
30 conditions. An offender released by the board shall be monitored by  
31 the department for compliance. The board shall impose the conditions  
32 and instructions provided for in RCW 9.94A.704 should the board decide  
33 to release the offender. The board shall consider the department's  
34 recommendations and may impose conditions in addition to those  
35 recommended by the department. The board may impose or modify  
36 conditions of community custody following notice to the offender.

37 (5) Whenever the board or a community corrections officer of this  
38 state has reason to believe an offender released under subsection (1)

1 of this section has violated a condition of community custody or the  
2 laws of this state, any community corrections officer may arrest or  
3 cause the arrest and detention of the offender pending a determination  
4 by the board whether sanctions should be imposed or the offender's  
5 community custody should be revoked. The community corrections officer  
6 shall report all facts and circumstances surrounding the alleged  
7 violation to the board in a written report to the board, with  
8 recommendations.

9 **Sec. 5.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read  
10 as follows:

11 (1)(a) If an offender released by the board under RCW 9.95.420  
12 violates any condition or requirement of community custody, the board  
13 may transfer the offender to a more restrictive confinement status to  
14 serve up to the remaining portion of the sentence, less credit for any  
15 period actually spent in community custody or in detention awaiting  
16 disposition of an alleged violation and subject to the limitations of  
17 subsection (2) of this section.

18 (b) If an offender released by the board under section 4 of this  
19 act is alleged to have violated any condition or requirement of  
20 community custody, the offender shall be transferred to confinement in  
21 a correctional institution owned, operated by, or operated under  
22 contract with the state while awaiting the disposition of the hearing  
23 specified in subsection (3) of this section.

24 (c) If an offender released by the board under section 4 of this  
25 act is alleged to have violated any three conditions or requirements of  
26 community custody within a six-month period, the offender shall be  
27 transferred to confinement in a correctional institution owned,  
28 operated by, or operated under contract with the state while awaiting  
29 the disposition of the hearing specified in subsection (3) of this  
30 section.

31 (d) If an offender released by the board under section 4 of this  
32 act is convicted of any felony offense, that offender shall be  
33 transferred to confinement in a correctional institution owned,  
34 operated by, or operated under contract with the state while awaiting  
35 the disposition of the hearing specified in subsection (3) of this  
36 section.

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

12           (b) If the board finds pursuant to the hearing specified in  
13 subsection (3) of this section, that an offender released by the board  
14 under section 4 of this act violated any condition or requirement of  
15 community custody, the board may revoke the offender's conditional  
16 release and impose the remaining portion of the offender's life  
17 sentence. The offender may repetition the board for conditional  
18 release pursuant to section 4 of this act after the offender has served  
19 at least five years in total confinement, without reduction, from the  
20 date on which the board revoked the offender's conditional release. If  
21 the board finds that a violation of a condition or requirement of  
22 community custody has been proved by a preponderance of the evidence,  
23 but is not sufficient cause for revocation of the offender's release  
24 from community custody, the board may, in its discretion, reinstate the  
25 offender on community custody. If the board reinstates the offender on  
26 community custody, the board may impose upon the offender sanctions  
27 listed under (a) of this subsection as well as additional conditions or  
28 requirements of community custody.

29           (c) If the board finds pursuant to the hearing specified in  
30 subsection (3) of this section, that an offender released by the board  
31 under section 4 of this act has violated three conditions or  
32 requirements of community custody within a six-month period, the board  
33 shall revoke the offender's conditional release and impose the  
34 remaining portion of the offender's life sentence. The offender may  
35 repetition the board for conditional release pursuant to section 4 of  
36 this act after the offender has served at least five years in total  
37 confinement, without reduction, from the date on which the board  
38 revoked the offender's conditional release.



1       (d) If the board finds pursuant to the hearing specified in  
2 subsection (3) of this section, that an offender released by the board  
3 under section 4 of this act has been convicted of a most serious  
4 offense under RCW 9.94A.030(32), the board shall revoke the offender's  
5 conditional release and impose the remaining portion of the offender's  
6 life sentence. These offenders shall not be eligible for release. If  
7 the board finds that the offender has been convicted of any felony that  
8 is not a most serious offense under RCW 9.94A.030(32), the board shall  
9 revoke the offender's conditional release and impose the remaining  
10 portion of the offender's life sentence. The offender may repetition  
11 the board for conditional release pursuant to section 4 of this act  
12 after the offender has served at least ten years in total confinement,  
13 without reduction, from the date on which the board revoked the  
14 offender's conditional release.

15       (3) If an offender released by the board under RCW 9.95.420 or  
16 section 4 of this act is accused of violating any condition or  
17 requirement of community custody, he or she is entitled to a hearing  
18 before the board or a designee of the board prior to the imposition of  
19 sanctions. The hearing shall be considered as offender disciplinary  
20 proceedings and shall not be subject to chapter 34.05 RCW. The board  
21 shall develop hearing procedures and a structure of graduated sanctions  
22 consistent with the hearing procedures and graduated sanctions  
23 developed pursuant to RCW 9.94A.737. The board may suspend the  
24 offender's release to community custody and confine the offender in a  
25 correctional institution owned, operated by, or operated under contract  
26 with the state prior to the hearing unless the offender has been  
27 arrested and confined for a new criminal offense.

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

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

33       (b) The board shall provide the offender with findings and  
34 conclusions which include the evidence relied upon, and the reasons the  
35 particular sanction was imposed. The board shall notify the offender  
36 of the right to appeal the sanction and the right to file a personal  
37 restraint petition under court rules after the final decision of the  
38 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 presiding hearing officer, if  
15 the offender has a language or communications barrier; (iii) testify or  
16 remain silent; (iv) call witnesses and present documentary evidence;  
17 (v) question witnesses who appear and testify; and (vi) be represented  
18 by counsel if revocation of the release to community custody upon a  
19 finding of violation is a probable sanction for the violation. The  
20 board may not revoke the release to community custody of any offender  
21 who was not represented by counsel at the hearing, unless the offender  
22 has waived the right to counsel; and

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

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

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

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