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**SUBSTITUTE SENATE BILL 5839**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Human Services, Mental Health & Housing (originally sponsored by Senators Darneille, O'Ban, and Kohl-Welles; by request of Department of Corrections)

READ FIRST TIME 02/19/15.

1 AN ACT Relating to technical corrections to processes for persons  
2 sentenced for offenses committed prior to reaching eighteen years of  
3 age; amending RCW 9.94A.501, 9.94A.533, 9.94A.728, 9.94A.729,  
4 10.95.030, 9.94A.730, 10.95.035, and 9.94A.704; and declaring an  
5 emergency.

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

7 **Sec. 1.** RCW 9.94A.501 and 2013 2nd sp.s. c 35 s 15 are each  
8 amended to read as follows:

9 (1) The department shall supervise the following offenders who  
10 are sentenced to probation in superior court, pursuant to RCW  
11 9.92.060, 9.95.204, or 9.95.210:

12 (a) Offenders convicted of:

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

14 (ii) Custodial sexual misconduct second degree;

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

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

17 (b) Offenders who have:

18 (i) A current conviction for a repetitive domestic violence  
19 offense where domestic violence has been plead and proven after  
20 August 1, 2011; and

1 (ii) A prior conviction for a repetitive domestic violence  
2 offense or domestic violence felony offense where domestic violence  
3 has been 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  
8 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702  
9 whose risk assessment classifies the offender as one who is at a high  
10 risk to 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  
15 violent offense and was sentenced to a term of community custody  
16 pursuant to 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  
20 pursuant 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  
23 custody pursuant to RCW 9.94A.701;

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

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

32 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular  
33 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)  
34 (felony DUI), or RCW 46.61.504(6) (felony physical control).

35 (5) The department shall supervise any offender who is released  
36 by the indeterminate sentence review board and who was sentenced to  
37 community custody or subject to community custody under the terms of  
38 release.

39 (6) The department is not authorized to, and may not, supervise  
40 any offender sentenced to a term of community custody or any

1 probationer unless the offender or probationer is one for whom  
2 supervision is required under this section or RCW 9.94A.5011.

3 ~~((+6+))~~ (7) The department shall conduct a risk assessment for  
4 every felony offender sentenced to a term of community custody who  
5 may be subject to supervision under this section or RCW 9.94A.5011.

6 **Sec. 2.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to  
7 read as follows:

8 (1) The provisions of this section apply to the standard sentence  
9 ranges determined by RCW 9.94A.510 or 9.94A.517.

10 (2) For persons convicted of the anticipatory offenses of  
11 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
12 RCW, the standard sentence range is determined by locating the  
13 sentencing grid sentence range defined by the appropriate offender  
14 score and the seriousness level of the completed crime, and  
15 multiplying the range by seventy-five percent.

16 (3) The following additional times shall be added to the standard  
17 sentence range for felony crimes committed after July 23, 1995, if  
18 the offender or an accomplice was armed with a firearm as defined in  
19 RCW 9.41.010 and the offender is being sentenced for one of the  
20 crimes listed in this subsection as eligible for any firearm  
21 enhancements based on the classification of the completed felony  
22 crime. If the offender is being sentenced for more than one offense,  
23 the firearm enhancement or enhancements must be added to the total  
24 period of confinement for all offenses, regardless of which  
25 underlying offense is subject to a firearm enhancement. If the  
26 offender or an accomplice was armed with a firearm as defined in RCW  
27 9.41.010 and the offender is being sentenced for an anticipatory  
28 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
29 this subsection as eligible for any firearm enhancements, the  
30 following additional times shall be added to the standard sentence  
31 range determined under subsection (2) of this section based on the  
32 felony crime of conviction as classified under RCW 9A.28.020:

33 (a) Five years for any felony defined under any law as a class A  
34 felony or with a statutory maximum sentence of at least twenty years,  
35 or both, and not covered under (f) of this subsection;

36 (b) Three years for any felony defined under any law as a class B  
37 felony or with a statutory maximum sentence of ten years, or both,  
38 and not covered under (f) of this subsection;

1 (c) Eighteen months for any felony defined under any law as a  
2 class C felony or with a statutory maximum sentence of five years, or  
3 both, and not covered under (f) of this subsection;

4 (d) If the offender is being sentenced for any firearm  
5 enhancements under (a), (b), and/or (c) of this subsection and the  
6 offender has previously been sentenced for any deadly weapon  
7 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
8 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
9 both, all firearm enhancements under this subsection shall be twice  
10 the amount of the enhancement listed;

11 (e) Notwithstanding any other provision of law, all firearm  
12 enhancements under this section are mandatory, shall be served in  
13 total confinement, and shall run consecutively to all other  
14 sentencing provisions, including other firearm or deadly weapon  
15 enhancements, for all offenses sentenced under this chapter. However,  
16 whether or not a mandatory minimum term has expired, an offender  
17 serving a sentence under this subsection may be:

18 (i) Granted an extraordinary medical placement when authorized  
19 under RCW 9.94A.728(3); or

20 (ii) Released under the provisions of RCW 9.94A.730;

21 (f) The firearm enhancements in this section shall apply to all  
22 felony crimes except the following: Possession of a machine gun,  
23 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
24 unlawful possession of a firearm in the first and second degree, and  
25 use of a machine gun in a felony;

26 (g) If the standard sentence range under this section exceeds the  
27 statutory maximum sentence for the offense, the statutory maximum  
28 sentence shall be the presumptive sentence unless the offender is a  
29 persistent offender. If the addition of a firearm enhancement  
30 increases the sentence so that it would exceed the statutory maximum  
31 for the offense, the portion of the sentence representing the  
32 enhancement may not be reduced.

33 (4) The following additional times shall be added to the standard  
34 sentence range for felony crimes committed after July 23, 1995, if  
35 the offender or an accomplice was armed with a deadly weapon other  
36 than a firearm as defined in RCW 9.41.010 and the offender is being  
37 sentenced for one of the crimes listed in this subsection as eligible  
38 for any deadly weapon enhancements based on the classification of the  
39 completed felony crime. If the offender is being sentenced for more  
40 than one offense, the deadly weapon enhancement or enhancements must

1 be added to the total period of confinement for all offenses,  
2 regardless of which underlying offense is subject to a deadly weapon  
3 enhancement. If the offender or an accomplice was armed with a deadly  
4 weapon other than a firearm as defined in RCW 9.41.010 and the  
5 offender is being sentenced for an anticipatory offense under chapter  
6 9A.28 RCW to commit one of the crimes listed in this subsection as  
7 eligible for any deadly weapon enhancements, the following additional  
8 times shall be added to the standard sentence range determined under  
9 subsection (2) of this section based on the felony crime of  
10 conviction as classified under RCW 9A.28.020:

11 (a) Two years for any felony defined under any law as a class A  
12 felony or with a statutory maximum sentence of at least twenty years,  
13 or both, and not covered under (f) of this subsection;

14 (b) One year for any felony defined under any law as a class B  
15 felony or with a statutory maximum sentence of ten years, or both,  
16 and not covered under (f) of this subsection;

17 (c) Six months for any felony defined under any law as a class C  
18 felony or with a statutory maximum sentence of five years, or both,  
19 and not covered under (f) of this subsection;

20 (d) If the offender is being sentenced under (a), (b), and/or (c)  
21 of this subsection for any deadly weapon enhancements and the  
22 offender has previously been sentenced for any deadly weapon  
23 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
24 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
25 both, all deadly weapon enhancements under this subsection shall be  
26 twice the amount of the enhancement listed;

27 (e) Notwithstanding any other provision of law, all deadly weapon  
28 enhancements under this section are mandatory, shall be served in  
29 total confinement, and shall run consecutively to all other  
30 sentencing provisions, including other firearm or deadly weapon  
31 enhancements, for all offenses sentenced under this chapter. However,  
32 whether or not a mandatory minimum term has expired, an offender  
33 serving a sentence under this subsection may be:

34 (i) Granted an extraordinary medical placement when authorized  
35 under RCW 9.94A.728(3); or

36 (ii) Released under the provisions of RCW 9.94A.730;

37 (f) The deadly weapon enhancements in this section shall apply to  
38 all felony crimes except the following: Possession of a machine gun,  
39 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and  
2 use of a machine gun in a felony;

3 (g) If the standard sentence range under this section exceeds the  
4 statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. If the addition of a deadly weapon enhancement  
7 increases the sentence so that it would exceed the statutory maximum  
8 for the offense, the portion of the sentence representing the  
9 enhancement may not be reduced.

10 (5) The following additional times shall be added to the standard  
11 sentence range if the offender or an accomplice committed the offense  
12 while in a county jail or state correctional facility and the  
13 offender is being sentenced for one of the crimes listed in this  
14 subsection. If the offender or an accomplice committed one of the  
15 crimes listed in this subsection while in a county jail or state  
16 correctional facility, and the offender is being sentenced for an  
17 anticipatory offense under chapter 9A.28 RCW to commit one of the  
18 crimes listed in this subsection, the following additional times  
19 shall be added to the standard sentence range determined under  
20 subsection (2) of this section:

21 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
22 (a) or (b) or 69.50.410;

23 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
24 (c), (d), or (e);

25 (c) Twelve months for offenses committed under RCW 69.50.4013.

26 For the purposes of this subsection, all of the real property of  
27 a state correctional facility or county jail shall be deemed to be  
28 part of that facility or county jail.

29 (6) An additional twenty-four months shall be added to the  
30 standard sentence range for any ranked offense involving a violation  
31 of chapter 69.50 RCW if the offense was also a violation of RCW  
32 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
33 run consecutively to all other sentencing provisions, for all  
34 offenses sentenced under this chapter.

35 (7) An additional two years shall be added to the standard  
36 sentence range for vehicular homicide committed while under the  
37 influence of intoxicating liquor or any drug as defined by RCW  
38 46.61.502 for each prior offense as defined in RCW 46.61.5055. All  
39 enhancements under this subsection shall be mandatory, shall be

1 served in total confinement, and shall run consecutively to all other  
2 sentencing provisions.

3 (8)(a) The following additional times shall be added to the  
4 standard sentence range for felony crimes committed on or after July  
5 1, 2006, if the offense was committed with sexual motivation, as that  
6 term is defined in RCW 9.94A.030. If the offender is being sentenced  
7 for more than one offense, the sexual motivation enhancement must be  
8 added to the total period of total confinement for all offenses,  
9 regardless of which underlying offense is subject to a sexual  
10 motivation enhancement. If the offender committed the offense with  
11 sexual motivation and the offender is being sentenced for an  
12 anticipatory offense under chapter 9A.28 RCW, the following  
13 additional times shall be added to the standard sentence range  
14 determined under subsection (2) of this section based on the felony  
15 crime of conviction as classified under RCW 9A.28.020:

16 (i) Two years for any felony defined under the law as a class A  
17 felony or with a statutory maximum sentence of at least twenty years,  
18 or both;

19 (ii) Eighteen months for any felony defined under any law as a  
20 class B felony or with a statutory maximum sentence of ten years, or  
21 both;

22 (iii) One year for any felony defined under any law as a class C  
23 felony or with a statutory maximum sentence of five years, or both;

24 (iv) If the offender is being sentenced for any sexual motivation  
25 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
26 the offender has previously been sentenced for any sexual motivation  
27 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
28 (iii) of this subsection, all sexual motivation enhancements under  
29 this subsection shall be twice the amount of the enhancement listed;

30 (b) Notwithstanding any other provision of law, all sexual  
31 motivation enhancements under this subsection are mandatory, shall be  
32 served in total confinement, and shall run consecutively to all other  
33 sentencing provisions, including other sexual motivation  
34 enhancements, for all offenses sentenced under this chapter. However,  
35 whether or not a mandatory minimum term has expired, an offender  
36 serving a sentence under this subsection may be:

37 (i) Granted an extraordinary medical placement when authorized  
38 under RCW 9.94A.728(3); or

39 (ii) Released under the provisions of RCW 9.94A.730;

1 (c) The sexual motivation enhancements in this subsection apply  
2 to all felony crimes;

3 (d) If the standard sentence range under this subsection exceeds  
4 the statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. If the addition of a sexual motivation  
7 enhancement increases the sentence so that it would exceed the  
8 statutory maximum for the offense, the portion of the sentence  
9 representing the enhancement may not be reduced;

10 (e) The portion of the total confinement sentence which the  
11 offender must serve under this subsection shall be calculated before  
12 any earned early release time is credited to the offender;

13 (f) Nothing in this subsection prevents a sentencing court from  
14 imposing a sentence outside the standard sentence range pursuant to  
15 RCW 9.94A.535.

16 (9) An additional one-year enhancement shall be added to the  
17 standard sentence range for the felony crimes of RCW 9A.44.073,  
18 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
19 or after July 22, 2007, if the offender engaged, agreed, or offered  
20 to engage the victim in the sexual conduct in return for a fee. If  
21 the offender is being sentenced for more than one offense, the  
22 one-year enhancement must be added to the total period of total  
23 confinement for all offenses, regardless of which underlying offense  
24 is subject to the enhancement. If the offender is being sentenced for  
25 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
26 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
27 offender attempted, solicited another, or conspired to engage, agree,  
28 or offer to engage the victim in the sexual conduct in return for a  
29 fee, an additional one-year enhancement shall be added to the  
30 standard sentence range determined under subsection (2) of this  
31 section. For purposes of this subsection, "sexual conduct" means  
32 sexual intercourse or sexual contact, both as defined in chapter  
33 9A.44 RCW.

34 (10)(a) For a person age eighteen or older convicted of any  
35 criminal street gang-related felony offense for which the person  
36 compensated, threatened, or solicited a minor in order to involve the  
37 minor in the commission of the felony offense, the standard sentence  
38 range is determined by locating the sentencing grid sentence range  
39 defined by the appropriate offender score and the seriousness level  
40 of the completed crime, and multiplying the range by one hundred



1 twenty-five percent. If the standard sentence range under this  
2 subsection exceeds the statutory maximum sentence for the offense,  
3 the statutory maximum sentence is the presumptive sentence unless the  
4 offender is a persistent offender.

5 (b) This subsection does not apply to any criminal street gang-  
6 related felony offense for which involving a minor in the commission  
7 of the felony offense is an element of the offense.

8 (c) The increased penalty specified in (a) of this subsection is  
9 unavailable in the event that the prosecution gives notice that it  
10 will seek an exceptional sentence based on an aggravating factor  
11 under RCW 9.94A.535.

12 (11) An additional twelve months and one day shall be added to  
13 the standard sentence range for a conviction of attempting to elude a  
14 police vehicle as defined by RCW 46.61.024, if the conviction  
15 included a finding by special allegation of endangering one or more  
16 persons under RCW 9.94A.834.

17 (12) An additional twelve months shall be added to the standard  
18 sentence range for an offense that is also a violation of RCW  
19 9.94A.831.

20 (13) An additional twelve months shall be added to the standard  
21 sentence range for vehicular homicide committed while under the  
22 influence of intoxicating liquor or any drug as defined by RCW  
23 46.61.520 or for vehicular assault committed while under the  
24 influence of intoxicating liquor or any drug as defined by RCW  
25 46.61.522, or for any felony driving under the influence (RCW  
26 46.61.502(6)) or felony physical control under the influence (RCW  
27 46.61.504(6)) for each child passenger under the age of sixteen who  
28 is an occupant in the defendant's vehicle. These enhancements shall  
29 be mandatory, shall be served in total confinement, and shall run  
30 consecutively to all other sentencing provisions. If the addition of  
31 a minor child enhancement increases the sentence so that it would  
32 exceed the statutory maximum for the offense, the portion of the  
33 sentence representing the enhancement may not be reduced.

34 (14) An additional twelve months shall be added to the standard  
35 sentence range for an offense that is also a violation of RCW  
36 9.94A.832.

37 **Sec. 3.** RCW 9.94A.728 and 2010 c 224 s 6 are each amended to  
38 read as follows:

1 No person serving a sentence imposed pursuant to this chapter and  
2 committed to the custody of the department shall leave the confines  
3 of the correctional facility or be released prior to the expiration  
4 of the sentence except as follows:

5 (1) An offender may earn early release time as authorized by RCW  
6 9.94A.729;

7 (2) An offender may leave a correctional facility pursuant to an  
8 authorized furlough or leave of absence. In addition, offenders may  
9 leave a correctional facility when in the custody of a corrections  
10 officer or officers;

11 (3)(a) The secretary may authorize an extraordinary medical  
12 placement for an offender when all of the following conditions exist:

13 (i) The offender has a medical condition that is serious and is  
14 expected to require costly care or treatment;

15 (ii) The offender poses a low risk to the community because he or  
16 she is currently physically incapacitated due to age or the medical  
17 condition or is expected to be so at the time of release; and

18 (iii) It is expected that granting the extraordinary medical  
19 placement will result in a cost savings to the state.

20 (b) An offender sentenced to death or to life imprisonment  
21 without the possibility of release or parole is not eligible for an  
22 extraordinary medical placement.

23 (c) The secretary shall require electronic monitoring for all  
24 offenders in extraordinary medical placement unless the electronic  
25 monitoring equipment interferes with the function of the offender's  
26 medical equipment or results in the loss of funding for the  
27 offender's medical care, in which case, an alternative type of  
28 monitoring shall be utilized. The secretary shall specify who shall  
29 provide the monitoring services and the terms under which the  
30 monitoring shall be performed.

31 (d) The secretary may revoke an extraordinary medical placement  
32 under this subsection at any time.

33 (e) Persistent offenders are not eligible for extraordinary  
34 medical placement;

35 (4) The governor, upon recommendation from the clemency and  
36 pardons board, may grant an extraordinary release for reasons of  
37 serious health problems, senility, advanced age, extraordinary  
38 meritorious acts, or other extraordinary circumstances;

39 (5) No more than the final six months of the offender's term of  
40 confinement may be served in partial confinement designed to aid the

1 offender in finding work and reestablishing himself or herself in the  
2 community or no more than the final twelve months of the offender's  
3 term of confinement may be served in partial confinement as part of  
4 the parenting program in RCW 9.94A.6551. This is in addition to that  
5 period of earned early release time that may be exchanged for partial  
6 confinement pursuant to RCW 9.94A.729(5)(d);

7 (6) The governor may pardon any offender;

8 (7) The department may release an offender from confinement any  
9 time within ten days before a release date calculated under this  
10 section;

11 (8) An offender may leave a correctional facility prior to  
12 completion of his or her sentence if the sentence has been reduced as  
13 provided in RCW 9.94A.870; (~~and~~)

14 (9) Notwithstanding any other provisions of this section, an  
15 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
16 subject to a mandatory minimum sentence of total confinement shall  
17 not be released from total confinement before the completion of the  
18 listed mandatory minimum sentence for that felony crime of conviction  
19 unless allowed under RCW 9.94A.540; and

20 (10) Any person convicted of one or more crimes committed prior  
21 to the person's eighteenth birthday may be released from confinement  
22 pursuant to RCW 9.94A.730.

23 **Sec. 4.** RCW 9.94A.729 and 2014 c 130 s 4 are each amended to  
24 read as follows:

25 (1)(a) The term of the sentence of an offender committed to a  
26 correctional facility operated by the department may be reduced by  
27 earned release time in accordance with procedures that shall be  
28 developed and adopted by the correctional agency having jurisdiction  
29 in which the offender is confined. The earned release time shall be  
30 for good behavior and good performance, as determined by the  
31 correctional agency having jurisdiction. The correctional agency  
32 shall not credit the offender with earned release credits in advance  
33 of the offender actually earning the credits.

34 (b) Any program established pursuant to this section shall allow  
35 an offender to earn early release credits for presentence  
36 incarceration. If an offender is transferred from a county jail to  
37 the department, the administrator of a county jail facility shall  
38 certify to the department the amount of time spent in custody at the  
39 facility and the number of days of early release credits lost or not

1 earned. The department may approve a jail certification from a  
2 correctional agency that calculates early release time based on the  
3 actual amount of confinement time served by the offender before  
4 sentencing when an erroneous calculation of confinement time served  
5 by the offender before sentencing appears on the judgment and  
6 sentence. The department must adjust an offender's rate of early  
7 release listed on the jail certification to be consistent with the  
8 rate applicable to offenders in the department's facilities. However,  
9 the department is not authorized to adjust the number of presentence  
10 early release days that the jail has certified as lost or not earned.

11 (2) An offender who has been convicted of a felony committed  
12 after July 23, 1995, that involves any applicable deadly weapon  
13 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not  
14 receive any good time credits or earned release time for that portion  
15 of his or her sentence that results from any deadly weapon  
16 enhancements.

17 (3) An offender may earn early release time as follows:

18 (a) In the case of an offender sentenced pursuant to RCW  
19 10.95.030(3) or 10.95.035, the offender may not receive any earned  
20 early release time during the minimum term of confinement imposed by  
21 the court; for any remaining portion of the sentence served by the  
22 offender, the aggregate earned release time may not exceed ten  
23 percent of the sentence.

24 (b) In the case of an offender convicted of a serious violent  
25 offense, or a sex offense that is a class A felony, committed on or  
26 after July 1, 1990, and before July 1, 2003, the aggregate earned  
27 release time may not exceed fifteen percent of the sentence.

28 (c) In the case of an offender convicted of a serious violent  
29 offense, or a sex offense that is a class A felony, committed on or  
30 after July 1, 2003, the aggregate earned release time may not exceed  
31 ten percent of the sentence.

32 (d) An offender is qualified to earn up to fifty percent of  
33 aggregate earned release time if he or she:

34 (i) Is not classified as an offender who is at a high risk to  
35 reoffend as provided in subsection (4) of this section;

36 (ii) Is not confined pursuant to a sentence for:

37 (A) A sex offense;

38 (B) A violent offense;

39 (C) A crime against persons as defined in RCW 9.94A.411;

1 (D) A felony that is domestic violence as defined in RCW  
2 10.99.020;

3 (E) A violation of RCW 9A.52.025 (residential burglary);

4 (F) A violation of, or an attempt, solicitation, or conspiracy to  
5 violate, RCW 69.50.401 by manufacture or delivery or possession with  
6 intent to deliver methamphetamine; or

7 (G) A violation of, or an attempt, solicitation, or conspiracy to  
8 violate, RCW 69.50.406 (delivery of a controlled substance to a  
9 minor);

10 (iii) Has no prior conviction for the offenses listed in (d)(ii)  
11 of this subsection;

12 (iv) Participates in programming or activities as directed by the  
13 offender's individual reentry plan as provided under RCW 72.09.270 to  
14 the extent that such programming or activities are made available by  
15 the department; and

16 (v) Has not committed a new felony after July 22, 2007, while  
17 under community custody.

18 (e) In no other case shall the aggregate earned release time  
19 exceed one-third of the total sentence.

20 (4) The department shall perform a risk assessment of each  
21 offender who may qualify for earned early release under subsection  
22 (3)(d) of this section utilizing the risk assessment tool recommended  
23 by the Washington state institute for public policy. Subsection  
24 (3)(d) of this section does not apply to offenders convicted after  
25 July 1, 2010.

26 (5)(a) A person who is eligible for earned early release as  
27 provided in this section and who will be supervised by the department  
28 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to  
29 community custody in lieu of earned release time;

30 (b) The department shall, as a part of its program for release to  
31 the community in lieu of earned release, require the offender to  
32 propose a release plan that includes an approved residence and living  
33 arrangement. All offenders with community custody terms eligible for  
34 release to community custody in lieu of earned release shall provide  
35 an approved residence and living arrangement prior to release to the  
36 community;

37 (c) The department may deny transfer to community custody in lieu  
38 of earned release time if the department determines an offender's  
39 release plan, including proposed residence location and living  
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the  
2 conditions of the sentence, place the offender at risk to reoffend,  
3 or present a risk to victim safety or community safety. The  
4 department's authority under this section is independent of any  
5 court-ordered condition of sentence or statutory provision regarding  
6 conditions for community custody;

7 (d) If the department is unable to approve the offender's release  
8 plan, the department may do one or more of the following:

9 (i) Transfer an offender to partial confinement in lieu of earned  
10 early release for a period not to exceed three months. The three  
11 months in partial confinement is in addition to that portion of the  
12 offender's term of confinement that may be served in partial  
13 confinement as provided in RCW 9.94A.728(5);

14 (ii) Provide rental vouchers to the offender for a period not to  
15 exceed three months if rental assistance will result in an approved  
16 release plan.

17 A voucher must be provided in conjunction with additional  
18 transition support programming or services that enable an offender to  
19 participate in services including, but not limited to, substance  
20 abuse treatment, mental health treatment, sex offender treatment,  
21 educational programming, or employment programming;

22 (e) The department shall maintain a list of housing providers  
23 that meets the requirements of RCW 72.09.285. If more than two  
24 voucher recipients will be residing per dwelling unit, as defined in  
25 RCW 59.18.030, rental vouchers for those recipients may only be paid  
26 to a housing provider on the department's list;

27 (f) For each offender who is the recipient of a rental voucher,  
28 the department shall gather data as recommended by the Washington  
29 state institute for public policy in order to best demonstrate  
30 whether rental vouchers are effective in reducing recidivism.

31 (6) An offender serving a term of confinement imposed under RCW  
32 9.94A.670(5)(a) is not eligible for earned release credits under this  
33 section.

34 **Sec. 5.** RCW 10.95.030 and 2014 c 130 s 9 are each amended to  
35 read as follows:

36 (1) Except as provided in subsections (2) and (3) of this  
37 section, any person convicted of the crime of aggravated first degree  
38 murder shall be sentenced to life imprisonment without possibility of  
39 release or parole. A person sentenced to life imprisonment under this

1 section shall not have that sentence suspended, deferred, or commuted  
2 by any judicial officer and the indeterminate sentence review board  
3 or its successor may not parole such prisoner nor reduce the period  
4 of confinement in any manner whatsoever including but not limited to  
5 any sort of good-time calculation. The department of social and  
6 health services or its successor or any executive official may not  
7 permit such prisoner to participate in any sort of release or  
8 furlough program.

9 (2) If, pursuant to a special sentencing proceeding held under  
10 RCW 10.95.050, the trier of fact finds that there are not sufficient  
11 mitigating circumstances to merit leniency, the sentence shall be  
12 death. In no case, however, shall a person be sentenced to death if  
13 the person had an intellectual disability at the time the crime was  
14 committed, under the definition of intellectual disability set forth  
15 in (a) of this subsection. A diagnosis of intellectual disability  
16 shall be documented by a licensed psychiatrist or licensed  
17 psychologist designated by the court, who is an expert in the  
18 diagnosis and evaluation of intellectual disabilities. The defense  
19 must establish an intellectual disability by a preponderance of the  
20 evidence and the court must make a finding as to the existence of an  
21 intellectual disability.

22 (a) "Intellectual disability" means the individual has: (i)  
23 Significantly subaverage general intellectual functioning; (ii)  
24 existing concurrently with deficits in adaptive behavior; and (iii)  
25 both significantly subaverage general intellectual functioning and  
26 deficits in adaptive behavior were manifested during the  
27 developmental period.

28 (b) "General intellectual functioning" means the results obtained  
29 by assessment with one or more of the individually administered  
30 general intelligence tests developed for the purpose of assessing  
31 intellectual functioning.

32 (c) "Significantly subaverage general intellectual functioning"  
33 means intelligence quotient seventy or below.

34 (d) "Adaptive behavior" means the effectiveness or degree with  
35 which individuals meet the standards of personal independence and  
36 social responsibility expected for his or her age.

37 (e) "Developmental period" means the period of time between  
38 conception and the eighteenth birthday.

39 (3)(a)(i) Any person convicted of the crime of aggravated first  
40 degree murder for an offense committed prior to the person's

1 sixteenth birthday shall be sentenced to a maximum term of life  
2 imprisonment and a minimum term of total confinement of twenty-five  
3 years.

4 (ii) Any person convicted of the crime of aggravated first degree  
5 murder for an offense committed when the person is at least sixteen  
6 years old but less than eighteen years old shall be sentenced to a  
7 maximum term of life imprisonment and a minimum term of total  
8 confinement of no less than twenty-five years. A minimum term of life  
9 may be imposed, in which case the person will be ineligible for  
10 parole or early release.

11 (b) In setting a minimum term, the court must take into account  
12 mitigating factors that account for the diminished culpability of  
13 youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012)  
14 including, but not limited to, the age of the individual, the youth's  
15 childhood and life experience, the degree of responsibility the youth  
16 was capable of exercising, and the youth's chances of becoming  
17 rehabilitated.

18 (c) A person sentenced under this subsection shall serve the  
19 sentence in a facility or institution operated, or utilized under  
20 contract, by the state. During the minimum term of total confinement,  
21 the person shall not be eligible for community custody, earned  
22 release time, furlough, home detention, partial confinement, work  
23 crew, work release, or any other form of early release authorized  
24 under RCW 9.94A.728, or any other form of authorized leave or absence  
25 from the correctional facility while not in the direct custody of a  
26 corrections officer. The provisions of this subsection shall not  
27 apply: (i) In the case of an offender in need of emergency medical  
28 treatment; or (ii) for an extraordinary medical placement when  
29 authorized under RCW 9.94A.728(3).

30 (d) Any person sentenced pursuant to this subsection shall be  
31 subject to community custody under the supervision of the department  
32 of corrections and the authority of the indeterminate sentence review  
33 board. As part of any sentence under this subsection, the court shall  
34 require the person to comply with any conditions imposed by the  
35 board.

36 (e) No later than five years prior to the expiration of the  
37 person's minimum term, the department of corrections shall conduct an  
38 assessment of the offender and identify programming and services that  
39 would be appropriate to prepare the offender for return to the



1 community. To the extent possible, the department shall make  
2 programming available as identified by the assessment.

3 (f) No later than one hundred eighty days prior to the expiration  
4 of the person's minimum term, the department of corrections shall  
5 conduct, and the offender shall participate in, an examination of the  
6 person, incorporating methodologies that are recognized by experts in  
7 the prediction of dangerousness, and including a prediction of the  
8 probability that the person will engage in future criminal behavior  
9 if released on conditions to be set by the board. The board may  
10 consider a person's failure to participate in an evaluation under  
11 this subsection in determining whether to release the person. The  
12 board shall order the person released, under such affirmative and  
13 other conditions as the board determines appropriate, unless the  
14 board determines by a preponderance of the evidence that, despite  
15 such conditions, it is more likely than not that the person will  
16 commit new criminal law violations if released. If the board does not  
17 order the person released, the board shall set a new minimum term not  
18 to exceed five additional years. The board shall give public safety  
19 considerations the highest priority when making all discretionary  
20 decisions regarding the ability for release and conditions of  
21 release.

22 (g) In a hearing conducted under (f) of this subsection, the  
23 board shall provide opportunities for victims and survivors of  
24 victims of any crimes for which the offender has been convicted to  
25 present statements as set forth in RCW 7.69.032. The procedures for  
26 victim and survivor of victim input shall be (~~developed~~) provided  
27 by rule. To facilitate victim and survivor of victim involvement,  
28 county prosecutor's offices shall ensure that any victim impact  
29 statements and known contact information for victims of record and  
30 survivors of victims are forwarded as part of the judgment and  
31 sentence.

32 (h) An offender released by the board is subject to the  
33 supervision of the department of corrections for a period of time to  
34 be determined by the board. The department shall monitor the  
35 offender's compliance with conditions of community custody imposed by  
36 the court(~~(, department,)~~) or board(~~(,)~~) and promptly report any  
37 violations to the board. Any violation of conditions of community  
38 custody established or modified by the board are subject to the  
39 provisions of RCW 9.95.425 through 9.95.440.

1 (i) An offender released or discharged under this section may be  
2 returned to the institution at the discretion of the board if the  
3 offender is found to have violated a condition of community custody.  
4 The offender is entitled to a hearing pursuant to RCW 9.95.435. If  
5 the board finds that the offender has committed a violation, the  
6 board shall set a new minimum term of incarceration not to exceed  
7 five years.

8 **Sec. 6.** RCW 9.94A.730 and 2014 c 130 s 10 are each amended to  
9 read as follows:

10 (1) Notwithstanding any other provision of this chapter, any  
11 person convicted of one or more crimes committed prior to the  
12 person's eighteenth birthday may petition the indeterminate sentence  
13 review board for early release after serving no less than twenty  
14 years of total confinement, provided the person has not been  
15 convicted for any crime committed subsequent to the person's  
16 eighteenth birthday, the person has not committed a (~~major~~  
17 ~~violation~~) disqualifying serious infraction as defined by the  
18 department in the twelve months prior to filing the petition for  
19 early release, and the current sentence was not imposed under RCW  
20 10.95.030 or 9.94A.507.

21 (2) (~~When an~~) No later than five years prior to the date the  
22 offender (~~who~~) will be eligible to petition (~~under this section~~  
23 has served fifteen years) for release, the department shall conduct  
24 an assessment of the offender and identify programming and services  
25 that would be appropriate to prepare the offender for return to the  
26 community. To the extent possible, the department shall make  
27 programming available as identified by the assessment.

28 (3) No later than one hundred eighty days from receipt of the  
29 petition for early release, the department shall conduct, and the  
30 offender shall participate in, an examination of the person,  
31 incorporating methodologies that are recognized by experts in the  
32 prediction of dangerousness, and including a prediction of the  
33 probability that the person will engage in future criminal behavior  
34 if released on conditions to be set by the board. The board may  
35 consider a person's failure to participate in an evaluation under  
36 this subsection in determining whether to release the person. The  
37 board shall order the person released under such affirmative and  
38 other conditions as the board determines appropriate, unless the  
39 board determines by a preponderance of the evidence that, despite

1 such conditions, it is more likely than not that the person will  
2 commit new criminal law violations if released. The board shall give  
3 public safety considerations the highest priority when making all  
4 discretionary decisions regarding the ability for release and  
5 conditions of release.

6 (4) In a hearing conducted under subsection (3) of this section,  
7 the board shall provide opportunities for victims and survivors of  
8 victims of any crimes for which the offender has been convicted to  
9 present statements as set forth in RCW 7.69.032. The procedures for  
10 victim and survivor of victim input shall be ~~((developed))~~ provided  
11 by rule. To facilitate victim and survivor of victim involvement,  
12 county prosecutor's offices shall ensure that any victim impact  
13 statements and known contact information for victims of record and  
14 survivors of victims are forwarded as part of the judgment and  
15 sentence.

16 (5) An offender released by the board is subject to the  
17 supervision of the department for a period of time to be determined  
18 by the board, up to the length of the court-imposed term of  
19 incarceration. The department shall monitor the offender's compliance  
20 with conditions of community custody imposed by the court(~~(~~  
21 ~~department~~~~)~~) or board(~~(~~  
22 board. Any violation of conditions of community custody established  
23 or modified by the board are subject to the provisions of RCW  
24 9.95.425 through 9.95.440.

25 (6) An offender whose petition for release is denied may file a  
26 new petition for release five years from the date of denial or at an  
27 earlier date as may be set by the board.

28 (7) An offender released under the provisions of this section may  
29 be returned to the institution at the discretion of the board if the  
30 offender is found to have violated a condition of community custody.  
31 The offender is entitled to a hearing pursuant to RCW 9.95.435. If  
32 the board finds that the offender has committed a new violation, the  
33 board may return the offender to the institution for up to the  
34 remainder of the court-imposed term of incarceration. The offender  
35 may file a new petition for release five years from the date of  
36 return to the institution or at an earlier date as may be set by the  
37 board.

38 **Sec. 7.** RCW 10.95.035 and 2014 c 130 s 11 are each amended to  
39 read as follows:

1 (1) A person, who was sentenced prior to June 1, 2014, under this  
2 chapter or any prior law, to a term of life without the possibility  
3 of parole for an offense committed prior to their eighteenth  
4 birthday, shall be returned to the sentencing court or the sentencing  
5 court's successor for sentencing consistent with RCW 10.95.030.  
6 Release and supervision of a person who receives a minimum term of  
7 less than life will be governed by RCW 10.95.030.

8 (2) The court shall provide an opportunity for victims and  
9 survivors of victims of any crimes for which the offender has been  
10 convicted to present a statement personally or by representation.

11 (3) The court's order setting a minimum term is subject to review  
12 to the same extent as a minimum term decision by the parole board  
13 before July 1, 1986.

14 (4) A resentencing under this section shall not reopen the  
15 defendant's conviction to challenges that would otherwise be barred  
16 by RCW 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

17 **Sec. 8.** RCW 9.94A.704 and 2014 c 35 s 1 are each amended to read  
18 as follows:

19 (1) Every person who is sentenced to a period of community  
20 custody shall report to and be placed under the supervision of the  
21 department, subject to RCW 9.94A.501.

22 (2)(a) The department shall assess the offender's risk of  
23 reoffense and may establish and modify additional conditions of  
24 community custody based upon the risk to community safety.

25 (b) Within the funds available for community custody, the  
26 department shall determine conditions on the basis of risk to  
27 community safety, and shall supervise offenders during community  
28 custody on the basis of risk to community safety and conditions  
29 imposed by the court. The secretary shall adopt rules to implement  
30 the provisions of this subsection (2)(b).

31 (3) If the offender is supervised by the department, the  
32 department shall at a minimum instruct the offender to:

33 (a) Report as directed to a community corrections officer;

34 (b) Remain within prescribed geographical boundaries;

35 (c) Notify the community corrections officer of any change in the  
36 offender's address or employment;

37 (d) Pay the supervision fee assessment; and

38 (e) Disclose the fact of supervision to any mental health or  
39 chemical dependency treatment provider, as required by RCW 9.94A.722.

1 (4) The department may require the offender to participate in  
2 rehabilitative programs, or otherwise perform affirmative conduct,  
3 and to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a  
5 sex offense, the department may:

6 (a) Require the offender to refrain from direct or indirect  
7 contact with the victim of the crime or immediate family member of  
8 the victim of the crime. If a victim or an immediate family member of  
9 a victim has requested that the offender not contact him or her after  
10 notice as provided in RCW 72.09.340, the department shall require the  
11 offender to refrain from contact with the requestor. Where the victim  
12 is a minor, the parent or guardian of the victim may make a request  
13 on the victim's behalf.

14 (b) Impose electronic monitoring. Within the resources made  
15 available by the department for this purpose, the department shall  
16 carry out any electronic monitoring using the most appropriate  
17 technology given the individual circumstances of the offender. As  
18 used in this section, "electronic monitoring" means the monitoring of  
19 an offender using an electronic offender tracking system including,  
20 but not limited to, a system using radio frequency or active or  
21 passive global positioning system technology.

22 (6) The department may not impose conditions that are contrary to  
23 those ordered by the court and may not contravene or decrease court-  
24 imposed conditions.

25 (7)(a) The department shall notify the offender in writing of any  
26 additional conditions or modifications.

27 (b) By the close of the next business day after receiving notice  
28 of a condition imposed or modified by the department, an offender may  
29 request an administrative review under rules adopted by the  
30 department. The condition shall remain in effect unless the reviewing  
31 officer finds that it is not reasonably related to the crime of  
32 conviction, the offender's risk of reoffending, or the safety of the  
33 community.

34 (8) The department shall notify the offender in writing upon  
35 community custody intake of the department's violation process.

36 (9) The department may require offenders to pay for special  
37 services rendered including electronic monitoring, day reporting, and  
38 telephone reporting, dependent on the offender's ability to pay. The  
39 department may pay for these services for offenders who are not able  
40 to pay.

1 (10)(a) When ((a-sex)) an offender ((has been sentenced pursuant  
2 to RCW 9.94A.507)) on community custody is under the authority of the  
3 board, the department shall assess the offender's risk of recidivism  
4 and shall recommend to the board any additional or modified  
5 conditions based upon the offender's risk to community safety and may  
6 recommend affirmative conduct or electronic monitoring consistent  
7 with subsections (4) through (6) of this section.

8 (b) The board may impose conditions in addition to court-ordered  
9 conditions. The board must consider and may impose department-  
10 recommended conditions. The board must impose a condition requiring  
11 the offender to refrain from contact with the victim or immediate  
12 family member of the victim as provided in subsection (5)(a) of this  
13 section.

14 (c) By the close of the next business day, after receiving notice  
15 of a condition imposed by the board or the department, an offender  
16 may request an administrative hearing under rules adopted by the  
17 board. The condition shall remain in effect unless the hearing  
18 examiner finds that it is not reasonably related to any of the  
19 following:

- 20 (i) The crime of conviction;
- 21 (ii) The offender's risk of reoffending;
- 22 (iii) The safety of the community.

23 (d) If the department finds that an emergency exists requiring  
24 the immediate imposition of additional conditions in order to prevent  
25 the offender from committing a crime, the department may impose such  
26 conditions. The department may not impose conditions that are  
27 contrary to those set by the board or the court and may not  
28 contravene or decrease court-imposed or board-imposed conditions.  
29 Conditions imposed under this subsection shall take effect  
30 immediately after notice to the offender by personal service, but  
31 shall not remain in effect longer than seven working days unless  
32 approved by the board.

33 (11) In setting, modifying, and enforcing conditions of community  
34 custody, the department shall be deemed to be performing a  
35 quasi-judicial function.

36 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
37 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

--- END ---