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ENGROSSED SUBSTITUTE HOUSE BILL 2303

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State of Washington

68th Legislature

2024 Regular Session

**By** House Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons, and Peterson)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to modification of conditions of community  
2 custody; amending RCW 9.94A.704, 9.94A.703, 9.94A.709, 9.94A.730,  
3 9.95.420, 9.95.435, and 10.73.100; reenacting and amending RCW  
4 10.95.030; creating a new section; and declaring an emergency.

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

6 **Sec. 1.** RCW 9.94A.704 and 2022 c 29 s 9 are each amended to read  
7 as follows:

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

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

14 (b) Within the funds available for community custody, the  
15 department shall determine conditions (~~on the basis of risk to~~  
16 ~~community safety~~) as provided for in this section, and shall  
17 supervise offenders during community custody on the basis of risk to  
18 community safety and conditions imposed by the court. The secretary  
19 shall adopt rules to implement the provisions of this subsection  
20 (2)(b).

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

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

4 (b) Remain within prescribed geographical boundaries;

5 (c) Notify the community corrections officer of any change in the  
6 offender's address or employment; and

7 (d) Disclose the fact of supervision to any mental health,  
8 chemical dependency, or domestic violence treatment provider, as  
9 required by RCW 9.94A.722.

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

13 (5) If the offender was sentenced pursuant to a conviction for a  
14 sex offense or domestic violence, the department may:

15 (a) Require the offender to refrain from direct or indirect  
16 contact with the victim of the crime or immediate family member of  
17 the victim of the crime. If a victim or an immediate family member of  
18 a victim has requested that the offender not contact him or her after  
19 notice as provided in RCW 72.09.340, the department shall require the  
20 offender to refrain from contact with the requestor. Where the victim  
21 is a minor, the parent or guardian of the victim may make a request  
22 on the victim's behalf. This subsection is not intended to reduce the  
23 preexisting authority of the department to impose no-contact  
24 conditions regardless of the offender's crime and regardless of who  
25 is protected by the no-contact condition, where such condition is  
26 based on risk to community safety.

27 (b) Impose electronic monitoring. Within the resources made  
28 available by the department for this purpose, the department shall  
29 carry out any electronic monitoring using the most appropriate  
30 technology given the individual circumstances of the offender. As  
31 used in this section, "electronic monitoring" has the same meaning as  
32 in RCW 9.94A.030.

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

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

38 (b) (~~By the close of the next business day after~~) Within 10  
39 business days of receiving notice of a condition imposed or modified  
40 by the department, an offender may request an administrative review

1 under rules adopted by the department. The condition shall remain in  
2 effect ~~((unless))~~ if the reviewing officer finds that it is ~~((not))~~  
3 reasonably related to ~~((the))~~ at least one of the following: The  
4 crime of conviction, the offender's risk of reoffending, or the  
5 safety of the community.

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

8 (9) The department may require offenders to pay for special  
9 services rendered including electronic monitoring, day reporting, and  
10 telephone reporting, dependent on the offender's ability to pay. The  
11 department may pay for these services for offenders who are not able  
12 to pay.

13 (10)(a) When an offender on community custody is under the  
14 authority of the board, the department shall assess the offender's  
15 risk of recidivism and shall recommend to the board any additional or  
16 modified conditions based upon the offender's crime of conviction,  
17 risk of reoffense, or risk to community safety and may recommend  
18 affirmative conduct or electronic monitoring consistent with  
19 subsections (4) through (6) of this section.

20 (b) The board may impose or modify conditions in addition to  
21 court-ordered conditions. The board may not impose conditions that  
22 are contrary to those ordered by the court and may not contravene or  
23 decrease court-imposed conditions. The board must consider and may  
24 impose department-recommended conditions. The board must impose a  
25 condition requiring the offender to refrain from contact with the  
26 victim or immediate family member of the victim as provided in  
27 subsection (5)(a) of this section. Regardless of the offender's date  
28 of sentencing, additional conditions imposed or modified by the board  
29 may be based upon the offender's crime of conviction, risk of  
30 reoffense, or risk to community safety. The additional conditions of  
31 community custody need not be crime-related if the conditions  
32 reasonably relate to either the risk of reoffense or risk to  
33 community safety.

34 (c) ~~((By the close of the next business day, after))~~ Within 10  
35 business days of receiving notice of a condition imposed by the board  
36 or the department, an offender may request an administrative hearing  
37 under rules adopted by the board. The condition shall remain in  
38 effect ~~((unless))~~ if the hearing examiner finds that it is ~~((not))~~  
39 reasonably related to ~~((any))~~ at least one of the following:

40 (i) The crime of conviction;

- 1 (ii) The offender's risk of reoffending;
- 2 (iii) The safety of the community; or
- 3 (iv) The offender's risk of domestic violence reoffense.

4 (d) If the department finds that an emergency exists requiring  
5 the immediate imposition of additional conditions in order to prevent  
6 the offender from committing a crime, the department may impose such  
7 conditions. The department may not impose conditions that are  
8 contrary to those set by the board or the court and may not  
9 contravene or decrease court-imposed or board-imposed conditions.  
10 Conditions imposed under this subsection shall take effect  
11 immediately after notice to the offender by personal service, but  
12 shall not remain in effect longer than seven working days unless  
13 approved by the board.

14 (e) The board shall notify the offender in writing of any  
15 additional or modified conditions.

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

19 **Sec. 2.** RCW 9.94A.703 and 2022 c 29 s 8 are each amended to read  
20 as follows:

21 When a court sentences a person to a term of community custody,  
22 the court shall impose conditions of community custody as provided in  
23 this section.

24 (1) **Mandatory conditions.** As part of any term of community  
25 custody, the court shall:

26 (a) Require the offender to inform the department of court-  
27 ordered treatment upon request by the department;

28 (b) Require the offender to comply with any conditions imposed by  
29 the department under RCW 9.94A.704;

30 (c) If the offender was sentenced under RCW 9.94A.507 for an  
31 offense listed in RCW 9.94A.507(1)(a), and the victim of the offense  
32 was under 18 years of age at the time of the offense, prohibit the  
33 offender from residing in a community protection zone;

34 (d) If the offender was sentenced under RCW 9A.36.120, prohibit  
35 the offender from serving in any paid or volunteer capacity where he  
36 or she has control or supervision of minors under the age of 13.

37 (2) **Waivable conditions.** Unless waived by the court, as part of  
38 any term of community custody, the court shall order an offender to:

1 (a) Report to and be available for contact with the assigned  
2 community corrections officer as directed;

3 (b) Work at department-approved education, employment, or  
4 community restitution, or any combination thereof;

5 (c) Refrain from possessing or consuming controlled substances  
6 except pursuant to lawfully issued prescriptions; and

7 (d) Obtain prior approval of the department for the offender's  
8 residence location and living arrangements.

9 (3) **Discretionary conditions.** As part of any term of community  
10 custody, the court may order an offender to:

11 (a) Remain within, or outside of, a specified geographical  
12 boundary;

13 (b) Refrain from direct or indirect contact with the victim of  
14 the crime or a specified class of individuals;

15 (c) Participate in crime-related treatment or counseling  
16 services;

17 (d) Participate in rehabilitative programs or otherwise perform  
18 affirmative conduct reasonably related to the circumstances of the  
19 offense, the offender's risk of reoffending, or the safety of the  
20 community;

21 (e) Refrain from possessing or consuming alcohol; or

22 (f) Comply with any crime-related prohibitions.

23 (4) **Special conditions.**

24 (a) In sentencing an offender convicted of a crime of domestic  
25 violence, as defined in RCW 10.99.020, if the offender has a minor  
26 child, or if the victim of the offense for which the offender was  
27 convicted has a minor child, the court may order the offender to  
28 participate in a domestic violence perpetrator program approved under  
29 RCW 43.20A.735.

30 (b) (i) In sentencing an offender convicted of an alcohol or drug-  
31 related traffic offense, the court shall require the offender to  
32 complete a diagnostic evaluation by a substance use disorder  
33 treatment program approved by the department of social and health  
34 services or a qualified probation department, defined under RCW  
35 46.61.516, that has been approved by the department of social and  
36 health services. If the offense was pursuant to chapter 46.61 RCW,  
37 the report shall be forwarded to the department of licensing. If the  
38 offender is found to have an alcohol or drug problem that requires  
39 treatment, the offender shall complete treatment in an approved  
40 substance use disorder treatment program as defined in chapter 71.24

1 RCW. If the offender is found not to have an alcohol or drug problem  
2 that requires treatment, the offender shall complete a course in an  
3 alcohol and drug information school licensed or certified by the  
4 department of health under chapter 70.96A RCW. The offender shall pay  
5 all costs for any evaluation, education, or treatment required by  
6 this section, unless the offender is eligible for an existing program  
7 offered or approved by the department of social and health services.

8 (ii) For purposes of this section, "alcohol or drug-related  
9 traffic offense" means the following: Driving while under the  
10 influence as defined by RCW 46.61.502, actual physical control while  
11 under the influence as defined by RCW 46.61.504, vehicular homicide  
12 as defined by RCW 46.61.520(1)(a), vehicular assault as defined by  
13 RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW  
14 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

15 (iii) This subsection (4)(b) does not require the department of  
16 social and health services to add new treatment or assessment  
17 facilities nor affect its use of existing programs and facilities  
18 authorized by law.

19 (5)(a) On the motion of the offender, following the offender's  
20 release from total confinement, the court may amend the substantive  
21 conditions of community custody imposed by the court.

22 (b) The offender shall have the burden of proving by a  
23 preponderance of the evidence that there has been a substantial  
24 change in circumstances such that the condition of community custody  
25 is no longer necessary for community safety. In determining whether  
26 there has been a substantial change in circumstances, the court may  
27 not base its determination solely on the fact that time has passed  
28 without a violation.

29 (c) An offender may file a motion to modify substantive  
30 conditions of community custody imposed by the court no more than  
31 once in every 12-month period that the order is in effect, starting  
32 from the date of the order.

33 (d) The time limit for collateral attacks established under RCW  
34 10.73.090 does not apply to any motion filed pursuant to this  
35 subsection.

36 (e) A motion under this subsection may not reopen the offender's  
37 conviction to challenges that would otherwise be barred by RCW  
38 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

1       **Sec. 3.** RCW 9.94A.709 and 2008 c 231 s 14 are each amended to  
2 read as follows:

3       (1) At any time prior to the completion or termination of a sex  
4 offender's term of community custody, if the court finds that public  
5 safety would be enhanced, the court may impose and enforce an order  
6 extending any or all of the conditions of community custody for a  
7 period up to the maximum allowable sentence for the crime as it is  
8 classified in chapter 9A.20 RCW, regardless of the expiration of the  
9 offender's term of community custody.

10       (2) (a) On the motion of the offender, following the offender's  
11 release from total confinement, the court may amend the substantive  
12 conditions of community custody imposed by the court.

13       (b) The offender shall have the burden of proving by a  
14 preponderance of the evidence that there has been a substantial  
15 change in circumstances such that the condition of community custody  
16 is no longer necessary for community safety. In determining whether  
17 there has been a substantial change in circumstances, the court may  
18 not base its determination solely on the fact that time has passed  
19 without a violation.

20       (c) An offender may file a motion to modify substantive  
21 conditions of community custody imposed by the court no more than  
22 once in every 12-month period that the order is in effect, starting  
23 from the date of the order.

24       (d) The time limit for collateral attacks established under RCW  
25 10.73.090 does not apply to any motion filed pursuant to this  
26 subsection.

27       (e) A motion under this subsection may not reopen the offender's  
28 conviction to challenges that would otherwise be barred by RCW  
29 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

30       (3) If a violation of a condition extended under this section  
31 occurs after the expiration of the offender's term of community  
32 custody, it shall be deemed a violation of the sentence for the  
33 purposes of RCW 9.94A.631 and may be punishable as contempt of court  
34 as provided for in RCW 7.21.040.

35       ~~((3))~~ (4) If the court extends a condition beyond the  
36 expiration of the term of community custody, the department is not  
37 responsible for supervision of the offender's compliance with the  
38 condition.

1       **Sec. 4.** RCW 9.94A.730 and 2015 c 134 s 6 are each amended to  
2 read as follows:

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

14       (2) No later than five years prior to the date the offender will  
15 be eligible to petition for release, the department shall conduct an  
16 assessment of the offender and identify programming and services that  
17 would be appropriate to prepare the offender for return to the  
18 community. To the extent possible, the department shall make  
19 programming available as identified by the assessment.

20       (3) No later than (~~(one hundred eighty)~~) 180 days from receipt of  
21 the petition for early release, the department shall conduct, and the  
22 offender shall participate in, an examination of the person,  
23 incorporating methodologies that are recognized by experts in the  
24 prediction of dangerousness, and including a prediction of the  
25 probability that the person will engage in future criminal behavior  
26 if released on conditions to be set by the board. The board may  
27 consider a person's failure to participate in an evaluation under  
28 this subsection in determining whether to release the person. The  
29 board shall order the person released under such affirmative and  
30 other conditions as the board determines appropriate, unless the  
31 board determines by a preponderance of the evidence that, despite  
32 such conditions, it is more likely than not that the person will  
33 commit new criminal law violations if released. The board shall give  
34 public safety considerations the highest priority when making all  
35 discretionary decisions regarding the ability for release and  
36 conditions of release.

37       (4) In a hearing conducted under subsection (3) of this section,  
38 the board shall provide opportunities for victims and survivors of  
39 victims of any crimes for which the offender has been convicted to  
40 present statements as set forth in RCW 7.69.032. The procedures for



1 victim and survivor of victim input shall be provided by rule. To  
2 facilitate victim and survivor of victim involvement, county  
3 prosecutor's offices shall ensure that any victim impact statements  
4 and known contact information for victims of record and survivors of  
5 victims are forwarded as part of the judgment and sentence.

6 (5) Any person released by the board pursuant to this section  
7 shall comply with conditions imposed or modified pursuant to RCW  
8 9.94A.704(10), in addition to court-imposed conditions.

9 (6) An offender released by the board is subject to the  
10 supervision of the department for a period of time to be determined  
11 by the board, up to the length of the court-imposed term of  
12 incarceration. The department shall monitor the offender's compliance  
13 with conditions of community custody imposed by the court or board  
14 and promptly report any violations to the board. Any violation of  
15 conditions of community custody established or modified by the board  
16 are subject to the provisions of RCW 9.95.425 through 9.95.440.

17 ~~((6))~~ (7) An offender whose petition for release is denied may  
18 file a new petition for release five years from the date of denial or  
19 at an earlier date as may be set by the board.

20 ~~((7))~~ (8) An offender released under the provisions of this  
21 section may be returned to the institution at the discretion of the  
22 board if the offender is found to have violated a condition of  
23 community custody. The offender is entitled to a hearing pursuant to  
24 RCW 9.95.435. If the board finds that the offender has committed a  
25 new violation, the board may return the offender to the institution  
26 for up to the remainder of the court-imposed term of incarceration.  
27 The offender may file a new petition for release five years from the  
28 date of return to the institution or at an earlier date as may be set  
29 by the board.

30 **Sec. 5.** RCW 9.95.420 and 2009 c 138 s 3 are each amended to read  
31 as follows:

32 (1)(a) Except as provided in (c) of this subsection, before the  
33 expiration of the minimum term, as part of the end of sentence review  
34 process under RCW 72.09.340, 72.09.345, and where appropriate,  
35 72.09.370, the department shall conduct, and the offender shall  
36 participate in, an examination of the offender, incorporating  
37 methodologies that are recognized by experts in the prediction of  
38 sexual dangerousness, and including a prediction of the probability  
39 that the offender will engage in sex offenses if released.

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

3 (c) If at the time the sentence is imposed by the superior court  
4 the offender's minimum term has expired or will expire within (~~one~~  
5 ~~hundred twenty~~) 120 days of the sentencing hearing, the department  
6 shall conduct, within (~~ninety~~) 90 days of the offender's arrival at  
7 a department of corrections facility, and the offender shall  
8 participate in, an examination of the offender, incorporating  
9 methodologies that are recognized by experts in the prediction of  
10 sexual dangerousness, and including a prediction of the probability  
11 that the offender will engage in sex offenses if released.

12 (2) The board shall impose the conditions and instructions  
13 provided for in RCW 9.94A.704. The board shall consider the  
14 department's recommendations and may impose conditions in addition to  
15 those recommended by the department. The board may impose or modify  
16 conditions of community custody following notice to the offender. The  
17 additional conditions may be based upon the crime of conviction, risk  
18 of reoffense, or risk to community safety. The additional conditions  
19 of community custody need not be crime-related if the conditions  
20 reasonably relate to either the risk of reoffense or risk to  
21 community safety.

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

38 (b) If at the time the offender's minimum term has expired or  
39 will expire within (~~one hundred twenty~~) 120 days of the offender's  
40 arrival at a department of correction's facility, then no later than

1 ((one hundred twenty)) 120 days after the offender's arrival at a  
2 department of corrections facility, but after the board receives the  
3 results from the end of sentence review process and the  
4 recommendations for additional or modified conditions of community  
5 custody from the department, the board shall conduct a hearing to  
6 determine whether it is more likely than not that the offender will  
7 engage in sex offenses if released on conditions to be set by the  
8 board. The board may consider an offender's failure to participate in  
9 an evaluation under subsection (1) of this section in determining  
10 whether to release the offender. The board shall order the offender  
11 released, under such affirmative and other conditions as the board  
12 determines appropriate, unless the board determines by a  
13 preponderance of the evidence that, despite such conditions, it is  
14 more likely than not that the offender will commit sex offenses if  
15 released. If the board does not order the offender released, the  
16 board shall establish a new minimum term as provided in RCW 9.95.011.

17 (4) In a hearing conducted under subsection (3) of this section,  
18 the board shall provide opportunities for the victims of any crimes  
19 for which the offender has been convicted to present statements as  
20 set forth in RCW 7.69.032. The procedures for victim input shall be  
21 developed by rule. To facilitate victim involvement, county  
22 prosecutor's offices shall ensure that any victim impact statements  
23 and known contact information for victims of record are forwarded as  
24 part of the judgment and sentence.

25 **Sec. 6.** RCW 9.95.435 and 2014 c 130 s 7 are each amended to read  
26 as follows:

27 (1) If an offender released by the board under RCW 9.95.420,  
28 10.95.030(~~(+3)~~) (2), or 9.94A.730 violates any condition or  
29 requirement of community custody, the board may transfer the offender  
30 to a more restrictive confinement status to serve up to the remaining  
31 portion of the sentence, less credit for any period actually spent in  
32 community custody or in detention awaiting disposition of an alleged  
33 violation and subject to the limitations of subsection (2) of this  
34 section.

35 (2) Following the hearing specified in subsection (3) of this  
36 section, the board may impose sanctions such as work release, home  
37 detention with electronic monitoring, work crew, community  
38 restitution, inpatient treatment, daily reporting, curfew,  
39 educational or counseling sessions, supervision enhanced through

1 electronic monitoring, or any other sanctions available in the  
2 community, or may suspend the release and sanction up to sixty days'  
3 confinement in a local correctional facility for each violation, or  
4 revoke the release to community custody whenever an offender released  
5 by the board under RCW 9.95.420, 10.95.030(~~((3))~~) (2), or 9.94A.730  
6 violates any condition or requirement of community custody.

7 (3) If an offender released by the board under RCW 9.95.420,  
8 10.95.030(~~((3))~~) (2), or 9.94A.730 is accused of violating any  
9 condition or requirement of community custody, he or she is entitled  
10 to a hearing before the board or a designee of the board prior to the  
11 imposition of sanctions. The hearing shall be considered as offender  
12 disciplinary proceedings and shall not be subject to chapter 34.05  
13 RCW. The board shall develop hearing procedures and a structure of  
14 graduated sanctions consistent with the hearing procedures and  
15 graduated sanctions developed pursuant to RCW 9.94A.737. The board  
16 may suspend the offender's release to community custody and confine  
17 the offender in a correctional institution owned, operated by, or  
18 operated under contract with the state prior to the hearing unless  
19 the offender has been arrested and confined for a new criminal  
20 offense.

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

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

26 (b) The board shall provide the offender with findings and  
27 conclusions which include the evidence relied upon, and the reasons  
28 the particular sanction was imposed. The board shall notify the  
29 offender of the right to appeal the sanction and the right to file a  
30 personal restraint petition under court rules after the final  
31 decision of the board;

32 (c) The hearing shall be held unless waived by the offender, and  
33 shall be electronically recorded. For offenders not in total  
34 confinement, the hearing shall be held within (~~((thirty))~~) 30 days of  
35 service of notice of the violation, but not less than (~~((twenty-four))~~)  
36 24 hours after notice of the violation. For offenders in total  
37 confinement, the hearing shall be held within (~~((thirty))~~) 30 days of  
38 service of notice of the violation, but not less than (~~((twenty-four))~~)  
39 24 hours after notice of the violation. The board or its designee  
40 shall make a determination whether probable cause exists to believe

1 the violation or violations occurred. The determination shall be made  
2 within (~~forty-eight~~) 48 hours of receipt of the allegation;

3 (d) The offender shall have the right to: (i) Be present at the  
4 hearing; (ii) have the assistance of a person qualified to assist the  
5 offender in the hearing, appointed by the presiding hearing officer  
6 if the offender has a language or communications barrier; (iii)  
7 testify or remain silent; (iv) call witnesses and present documentary  
8 evidence; (v) question witnesses who appear and testify; and (vi) be  
9 represented by counsel if revocation of the release to community  
10 custody upon a finding of violation is a probable sanction for the  
11 violation. The board may not revoke the release to community custody  
12 of any offender who was not represented by counsel at the hearing,  
13 unless the offender has waived the right to counsel; and

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

16 (5) Within seven days after the presiding hearing officer's  
17 decision, the offender may appeal the decision to the full board or  
18 to a panel of three reviewing examiners designated by the chair of  
19 the board or by the chair's designee. The sanction shall be reversed  
20 or modified if a majority of the panel finds that the sanction was  
21 not reasonably related to (~~any~~) at least one of the following: (a)  
22 The crime of conviction; (b) the violation committed; (c) the  
23 offender's risk of reoffending; or (d) the safety of the community.

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

26 **Sec. 7.** RCW 10.95.030 and 2023 c 102 s 23 and 2023 c 102 s 20  
27 are each reenacted and amended to read as follows:

28 (1) Except as provided in subsection (2) of this section, any  
29 person convicted of the crime of aggravated first degree murder shall  
30 be sentenced to life imprisonment without possibility of release or  
31 parole. A person sentenced to life imprisonment under this section  
32 shall not have that sentence suspended, deferred, or commuted by any  
33 judicial officer and the indeterminate sentence review board or its  
34 successor may not parole such prisoner nor reduce the period of  
35 confinement in any manner whatsoever including but not limited to any  
36 sort of good-time calculation. The department of social and health  
37 services or its successor or any executive official may not permit  
38 such prisoner to participate in any sort of release or furlough  
39 program.

1 (2) (a) (i) Any person convicted of the crime of aggravated first  
2 degree murder for an offense committed prior to the person's  
3 (~~sixteenth~~) 16th birthday shall be sentenced to a maximum term of  
4 life imprisonment and a minimum term of total confinement of  
5 (~~twenty-five~~) 25 years.

6 (ii) Any person convicted of the crime of aggravated first degree  
7 murder for an offense committed when the person is at least  
8 (~~sixteen~~) 16 years old but less than (~~eighteen~~) 18 years old  
9 shall be sentenced to a maximum term of life imprisonment and a  
10 minimum term of total confinement of no less than (~~twenty-five~~) 25  
11 years.

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

19 (c) A person sentenced under this subsection shall serve the  
20 sentence in a facility or institution operated, or utilized under  
21 contract, by the state. During the minimum term of total confinement,  
22 the person shall not be eligible for community custody, earned  
23 release time, furlough, home detention, partial confinement, work  
24 crew, work release, or any other form of early release authorized  
25 under RCW 9.94A.728, or any other form of authorized leave or absence  
26 from the correctional facility while not in the direct custody of a  
27 corrections officer. The provisions of this subsection shall not  
28 apply: (i) In the case of an offender in need of emergency medical  
29 treatment; or (ii) for an extraordinary medical placement when  
30 authorized under RCW 9.94A.728(1)(c).

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

37 (e) Any person sentenced pursuant to this subsection shall comply  
38 with conditions imposed or modified pursuant to RCW 9.94A.704(10), in  
39 addition to court-imposed conditions.

1        (f) No later than five years prior to the expiration of the  
2 person's minimum term, the department of corrections shall conduct an  
3 assessment of the offender and identify programming and services that  
4 would be appropriate to prepare the offender for return to the  
5 community. To the extent possible, the department shall make  
6 programming available as identified by the assessment.

7        ~~((f))~~ (g) No later than ~~((one hundred eighty))~~ 180 days prior  
8 to the expiration of the person's minimum term, the department of  
9 corrections shall conduct, and the offender shall participate in, an  
10 examination of the person, incorporating methodologies that are  
11 recognized by experts in the prediction of dangerousness, and  
12 including a prediction of the probability that the person will engage  
13 in future criminal behavior if released on conditions to be set by  
14 the board. The board may consider a person's failure to participate  
15 in an evaluation under this subsection in determining whether to  
16 release the person. The board shall order the person released, under  
17 such affirmative and other conditions as the board determines  
18 appropriate, unless the board determines by a preponderance of the  
19 evidence that, despite such conditions, it is more likely than not  
20 that the person will commit new criminal law violations if released.  
21 If the board does not order the person released, the board shall set  
22 a new minimum term not to exceed five additional years. The board  
23 shall give public safety considerations the highest priority when  
24 making all discretionary decisions regarding the ability for release  
25 and conditions of release.

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

36        ~~((h))~~ (i) An offender released by the board is subject to the  
37 supervision of the department of corrections for a period of time to  
38 be determined by the board. The department shall monitor the  
39 offender's compliance with conditions of community custody imposed by  
40 the court or board and promptly report any violations to the board.

1 Any violation of conditions of community custody established or  
2 modified by the board are subject to the provisions of RCW 9.95.425  
3 through 9.95.440.

4 ~~((i))~~ (j) An offender released or discharged under this section  
5 may be returned to the institution at the discretion of the board if  
6 the offender is found to have violated a condition of community  
7 custody. The offender is entitled to a hearing pursuant to RCW  
8 9.95.435. The board shall set a new minimum term of incarceration not  
9 to exceed five years.

10 **Sec. 8.** RCW 10.73.100 and 1989 c 395 s 2 are each amended to  
11 read as follows:

12 The time limit specified in RCW 10.73.090 does not apply to a  
13 petition or motion that is based solely on one or more of the  
14 following grounds:

15 (1) Newly discovered evidence, if the defendant acted with  
16 reasonable diligence in discovering the evidence and filing the  
17 petition or motion;

18 (2) The statute that the defendant was convicted of violating was  
19 unconstitutional on its face or as applied to the defendant's  
20 conduct;

21 (3) The conviction was barred by double jeopardy under Amendment  
22 V of the United States Constitution or Article I, section 9 of the  
23 state Constitution;

24 (4) The defendant ~~((pled))~~ pleaded not guilty and the evidence  
25 introduced at trial was insufficient to support the conviction;

26 (5) The sentence imposed was in excess of the court's  
27 jurisdiction; ~~((or))~~

28 (6) A motion for a modification of conditions of community  
29 custody pursuant to RCW 9.94A.703 and 9.94A.709; or

30 (7) There has been a significant change in the law, whether  
31 substantive or procedural, which is material to the conviction,  
32 sentence, or other order entered in a criminal or civil proceeding  
33 instituted by the state or local government, and either the  
34 legislature has expressly provided that the change in the law is to  
35 be applied retroactively, or a court, in interpreting a change in the  
36 law that lacks express legislative intent regarding retroactive  
37 application, determines that sufficient reasons exist to require  
38 retroactive application of the changed legal standard.



1        NEW SECTION.     **Sec. 9.**     This act applies to all offenders  
2 sentenced to a term of community custody before, on, or after the  
3 effective date of this section.

4        NEW SECTION.     **Sec. 10.**    If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8        NEW SECTION.     **Sec. 11.**    This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and takes  
11 effect immediately.

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