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**SUBSTITUTE SENATE BILL 5221**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Marr, Stevens, Carrell, Eide, Regala, Brandland, Kilmer and Rasmussen; by request of Indeterminate Sentence Review Board)

READ FIRST TIME 02/13/07.

1 AN ACT Relating to indeterminate sentenced offenders; and amending  
2 RCW 9.95.011, 9.95.420, 9.95.435, and 9.96.050.

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

4 **Sec. 1.** RCW 9.95.011 and 2002 c 174 s 2 are each amended to read  
5 as follows:

6 (1) When the court commits a convicted person to the department of  
7 corrections on or after July 1, 1986, for an offense committed before  
8 July 1, 1984, the court shall, at the time of sentencing or revocation  
9 of probation, fix the minimum term. The term so fixed shall not exceed  
10 the maximum sentence provided by law for the offense of which the  
11 person is convicted.

12 The court shall attempt to set the minimum term reasonably  
13 consistent with the purposes, standards, and sentencing ranges adopted  
14 under RCW 9.94A.850, but the court is subject to the same limitations  
15 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
16 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The  
17 court's minimum term decision is subject to review to the same extent  
18 as a minimum term decision by the parole board before July 1, 1986.

1           Thereafter, the expiration of the minimum term set by the court  
2 minus any time credits earned under RCW 9.95.070 and 9.95.110  
3 constitutes the parole eligibility review date, at which time the board  
4 may consider the convicted person for parole under RCW 9.95.100 and  
5 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
6 board's authority to reduce or increase the minimum term, once set by  
7 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
8 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

9           (2)(a) Except as provided in (b) of this subsection, not less than  
10 ninety days prior to the expiration of the minimum term of a person  
11 sentenced under RCW 9.94A.712, for a sex offense committed on or after  
12 September 1, 2001, less any time credits permitted by statute, the  
13 board shall review the person for conditional release to community  
14 custody as provided in RCW 9.95.420. If the board does not release the  
15 person, it shall set a new minimum term not to exceed an additional  
16 ~~((two))~~ five years. The board shall review the person again not less  
17 than ninety days prior to the expiration of the new minimum term.

18           (b) If at the time a person sentenced under RCW 9.94A.712 for a sex  
19 offense committed on or after September 1, 2001, arrives at a  
20 department of corrections facility, the offender's minimum term has  
21 expired or will expire within one hundred twenty days of the offender's  
22 arrival, then no later than one hundred twenty days after the  
23 offender's arrival at a department of corrections facility, but after  
24 the 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 review the  
27 person for conditional release to community custody as provided in RCW  
28 9.95.420. If the board does not release the person, it shall set a new  
29 minimum term not to exceed an additional ~~((two))~~ five years. The board  
30 shall review the person again not less than ninety days prior to the  
31 expiration of the new minimum term.

32           (c) In setting a new minimum term, the board may consider the  
33 length of time necessary for the offender to complete treatment and  
34 programming as well as other factors that relate to the offender's  
35 release under RCW 9.95.420. The board's rules shall permit an offender  
36 to petition for an earlier review if circumstances change or the board  
37 receives new information that would warrant an earlier review.

1       **Sec. 2.** RCW 9.95.420 and 2006 c 313 s 2 are each amended to read  
2 as follows:

3       (1)(a) Except as provided in (c) of this subsection, before the  
4 expiration of the minimum term, as part of the end of sentence review  
5 process under RCW 72.09.340, 72.09.345, and where appropriate,  
6 72.09.370, the department shall conduct, and the offender shall  
7 participate in, an examination of the offender, incorporating  
8 methodologies that are recognized by experts in the prediction of  
9 sexual dangerousness, and including a prediction of the probability  
10 that the offender will engage in sex offenses if released.

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

13       (c) If at the time the sentence is imposed by the superior court  
14 the offender's minimum term has expired or will expire within one  
15 hundred twenty days of the sentencing hearing, the department shall  
16 conduct, within ninety days of the offender's arrival at a department  
17 of corrections facility, and the offender shall participate in, an  
18 examination of the offender, incorporating methodologies that are  
19 recognized by experts in the prediction of sexual dangerousness, and  
20 including a prediction of the probability that the offender will engage  
21 in sex offenses if released.

22       (2) The board shall impose the conditions and instructions provided  
23 for in RCW 9.94A.720. The board shall consider the department's  
24 recommendations and may impose conditions in addition to those  
25 recommended by the department. The board may impose or modify  
26 conditions of community custody following notice to the offender.

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

1 of the evidence that, despite such conditions, it is more likely than  
2 not that the offender will commit sex offenses if released. If the  
3 board does not order the offender released, the board shall establish  
4 a new minimum term(~~(, not to exceed an additional two years)~~) as  
5 provided in RCW 9.95.011.

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

25 (4) In a hearing conducted under subsection (3) of this section,  
26 the board shall provide opportunities for the victims of any crimes for  
27 which the offender has been convicted to present oral, video, written,  
28 or in-person testimony to the board. The procedures for victim input  
29 shall be developed by rule. To facilitate victim involvement, county  
30 prosecutor's offices shall ensure that any victim impact statements and  
31 known contact information for victims of record are forwarded as part  
32 of the judgment and sentence.

33 **Sec. 3.** RCW 9.95.435 and 2003 c 218 s 1 are each amended to read  
34 as follows:

35 (1) If an offender released by the board under RCW 9.95.420  
36 violates any condition or requirement of community custody, the board  
37 may transfer the offender to a more restrictive confinement status to

1 serve up to the remaining portion of the sentence, less credit for any  
2 period actually spent in community custody or in detention awaiting  
3 disposition of an alleged violation and subject to the limitations of  
4 subsection (2) of this section.

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

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

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

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

33 (b) The board shall provide the offender with (~~written notice of~~  
34 ~~the violation,~~) findings and conclusions which include the evidence  
35 relied upon, and the reasons the particular sanction was imposed.  
36 (~~The notice shall include a statement of the rights specified in this~~  
37 ~~subsection, and the offender's~~) The offender will be notified of the

1 right to appeal the sanction and the right to file a personal restraint  
2 petition under court rules after the final decision of the board;

3 (c) The hearing shall be held unless waived by the offender, and  
4 shall be electronically recorded. For offenders not in total  
5 confinement, the hearing shall be held within thirty days of service of  
6 notice of the violation, but not less than twenty-four hours after  
7 notice of the violation. For offenders in total confinement, the  
8 hearing shall be held within thirty days of service of notice of the  
9 violation, but not less than twenty-four hours after notice of the  
10 violation. The board or its designee shall make a determination  
11 whether probable cause exists to believe the violation or violations  
12 occurred. The determination shall be made within forty-eight hours of  
13 receipt of the allegation;

14 (d) The offender shall have the right to: (i) Be present at the  
15 hearing; (ii) have the assistance of a person qualified to assist the  
16 offender in the hearing, appointed by the (~~hearing examiner~~)  
17 presiding hearing officer if the offender has a language or  
18 communications barrier; (iii) testify or remain silent; (iv) call  
19 witnesses and present documentary evidence; (v) question witnesses who  
20 appear and testify; and (vi) be represented by counsel if revocation of  
21 the release to community custody upon a finding of violation is a  
22 probable sanction for the violation. The board may not revoke the  
23 release to community custody of any offender who was not represented by  
24 counsel at the hearing, unless the offender has waived the right to  
25 counsel; and

26 (e) The sanction shall take effect if affirmed by the (~~hearing~~  
27 ~~examiner~~) presiding hearing officer.

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

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

1       **Sec. 4.** RCW 9.96.050 and 2002 c 16 s 3 are each amended to read as  
2 follows:

3       (1)(a) When ((a prisoner)) an offender on parole has performed all  
4 obligations of his or her release, including any and all legal  
5 financial obligations, for such time as shall satisfy the indeterminate  
6 sentence review board that his or her final release is not incompatible  
7 with the best interests of society and the welfare of the paroled  
8 individual, the board may make a final order of discharge and issue a  
9 certificate of discharge to the ((prisoner)) offender. ((The  
10 certificate of discharge shall be issued to the offender in person or  
11 by mail to the prisoner's last known address.))

12       (b) The board retains the jurisdiction to issue a certificate of  
13 discharge after the expiration of the offender's or parolee's maximum  
14 statutory sentence. If not earlier granted and any and all legal  
15 financial obligations have been paid, the board shall issue a final  
16 order of discharge three years from the date of parole unless the  
17 parolee is on suspended or revoked status at the expiration of the  
18 three years.

19       (c) The discharge, regardless of when issued, shall have the effect  
20 of restoring all civil rights lost by operation of law upon conviction,  
21 and the certification of discharge shall so state.

22       (d) This restoration of civil rights shall not restore the right to  
23 receive, possess, own, or transport firearms.

24       (e) The board shall issue a certificate of discharge to the  
25 offender in person or by mail to the offender's last known address.

26       (2) The board shall send a copy of every signed certificate of  
27 discharge to the auditor for the county in which the offender was  
28 sentenced and to the department of corrections. The department shall  
29 create and maintain a data base containing the names of all felons who  
30 have been issued certificates of discharge, the date of discharge, and  
31 the date of conviction and offense.

32       ~~((The board retains the jurisdiction to issue a certificate of~~  
33 ~~discharge after the expiration of the prisoner's or parolee's maximum~~  
34 ~~statutory sentence. If not earlier granted, the board shall make a~~  
35 ~~final order of discharge three years from the date of parole unless the~~  
36 ~~parolee is on suspended or revoked status at the expiration of the~~  
37 ~~three years. Such discharge, regardless of when issued, shall have the~~  
38 ~~effect of restoring all civil rights lost by operation of law upon~~

1 ~~conviction, and the certification of discharge shall so state. This~~  
2 ~~restoration of civil rights shall not restore the right to receive,~~  
3 ~~possess, own, or transport firearms.))~~

4 (3) The discharge provided for in this section shall be considered  
5 as a part of the sentence of the convicted person and shall not in any  
6 manner be construed as affecting the powers of the governor to pardon  
7 any such person.

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