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SENATE BILL 5221

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Hargrove, Marr, Stevens, Carrell, Eide, Regala, Brandland, Kilmer and Rasmussen; by request of Indeterminate Sentence Review Board

Read first time 01/12/2007. Referred to Committee on Human Services & Corrections.

1            AN ACT Relating to the release of offenders; and amending RCW  
2 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 9.95.420 and 2006 c 313 s 2 are each amended to read  
5 as follows:

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

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

16            (c) If at the time the sentence is imposed by the superior court  
17 the offender's minimum term has expired or will expire within one  
18 hundred twenty days of the sentencing hearing, the department shall  
19 conduct, within ninety days of the offender's arrival at a department

1 of corrections facility, and the offender shall participate in, an  
2 examination of the offender, incorporating methodologies that are  
3 recognized by experts in the prediction of sexual dangerousness, and  
4 including a prediction of the probability that the offender will engage  
5 in sex offenses if released.

6 (2) The board shall impose the conditions and instructions provided  
7 for in RCW 9.94A.720. The board shall consider the department's  
8 recommendations and may impose conditions in addition to those  
9 recommended by the department. The board may impose or modify  
10 conditions of community custody following notice to the offender.

11 (3)(a) Except as provided in (b) of this subsection, no later than  
12 ninety days before expiration of the minimum term, but after the board  
13 receives the results from the end of sentence review process and the  
14 recommendations for additional or modified conditions of community  
15 custody from the department, the board shall conduct a hearing to  
16 determine whether it is more likely than not that the offender will  
17 engage in sex offenses if released on conditions to be set by the  
18 board. The board may consider an offender's failure to participate in  
19 an evaluation under subsection (1) of this section in determining  
20 whether to release the offender. The board shall order the offender  
21 released, under such affirmative and other conditions as the board  
22 determines appropriate, unless the board determines by a preponderance  
23 of the evidence that, despite such conditions, it is more likely than  
24 not that the offender will commit sex offenses if released. If the  
25 board does not order the offender released, the board shall establish  
26 a new minimum term, not to exceed an additional (~~two~~) five years.

27 (b) If at the time the offender's minimum term has expired or will  
28 expire within one hundred twenty days of the offender's arrival at a  
29 department of correction's facility, then no later than one hundred  
30 twenty days after the offender's arrival at a department of corrections  
31 facility, but after the board receives the results from the end of  
32 sentence review process and the recommendations for additional or  
33 modified conditions of community custody from the department, the board  
34 shall conduct a hearing to determine whether it is more likely than not  
35 that the offender will engage in sex offenses if released on conditions  
36 to be set by the board. The board may consider an offender's failure  
37 to participate in an evaluation under subsection (1) of this section in  
38 determining whether to release the offender. The board shall order the

1 offender released, under such affirmative and other conditions as the  
2 board determines appropriate, unless the board determines by a  
3 preponderance of the evidence that, despite such conditions, it is more  
4 likely than not that the offender will commit sex offenses if released.  
5 If the board does not order the offender released, the board shall  
6 establish a new minimum term, not to exceed an additional (~~two~~) five  
7 years.

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

16 **Sec. 2.** RCW 9.95.435 and 2003 c 218 s 1 are each amended to read  
17 as follows:

18 (1) If an offender released by the board under RCW 9.95.420  
19 violates any condition or requirement of community custody, the board  
20 may transfer the offender to a more restrictive confinement status to  
21 serve up to the remaining portion of the sentence, less credit for any  
22 period actually spent in community custody or in detention awaiting  
23 disposition of an alleged violation and subject to the limitations of  
24 subsection (2) of this section.

25 (2) Following the hearing specified in subsection (3) of this  
26 section, the board may impose sanctions such as work release, home  
27 detention with electronic monitoring, work crew, community restitution,  
28 inpatient treatment, daily reporting, curfew, educational or counseling  
29 sessions, supervision enhanced through electronic monitoring, or any  
30 other sanctions available in the community, or may suspend the release  
31 and sanction up to sixty days' confinement in a local correctional  
32 facility for each violation, or revoke the release to community custody  
33 whenever an offender released by the board under RCW 9.95.420 violates  
34 any condition or requirement of community custody.

35 (3) If an offender released by the board under RCW 9.95.420 is  
36 accused of violating any condition or requirement of community custody,  
37 he or she is entitled to a hearing before the board or a designee of

1 the board prior to the imposition of sanctions. The hearing shall be  
2 considered as offender disciplinary proceedings and shall not be  
3 subject to chapter 34.05 RCW. The board shall develop hearing  
4 procedures and a structure of graduated sanctions consistent with the  
5 hearing procedures and graduated sanctions developed pursuant to RCW  
6 9.94A.737. The board may suspend the offender's release to community  
7 custody and confine the offender in a correctional institution owned,  
8 operated by, or operated under contract with the state prior to the  
9 hearing unless the offender has been arrested and confined for a new  
10 criminal offense.

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

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

16 (b) The board shall provide the offender with (~~written notice of~~  
17 ~~the violation,~~) findings and conclusions which include the evidence  
18 relied upon, and the reasons the particular sanction was imposed.  
19 (~~The notice shall include a statement of the rights specified in this~~  
20 ~~subsection, and the offender's~~) The offender will be notified of the  
21 right to appeal the sanction and the right to file a personal restraint  
22 petition under court rules after the final decision of the board;

23 (c) The hearing shall be held unless waived by the offender, and  
24 shall be electronically recorded. For offenders not in total  
25 confinement, the hearing shall be held within thirty days of service of  
26 notice of the violation, but not less than twenty-four hours after  
27 notice of the violation. For offenders in total confinement, the  
28 hearing shall be held within thirty days of service of notice of the  
29 violation, but not less than twenty-four hours after notice of the  
30 violation. The board or its designee shall make a determination  
31 whether probable cause exists to believe the violation or violations  
32 occurred. The determination shall be made within forty-eight hours of  
33 receipt of the allegation;

34 (d) The offender shall have the right to: (i) Be present at the  
35 hearing; (ii) have the assistance of a person qualified to assist the  
36 offender in the hearing, appointed by the (~~hearing examiner~~)  
37 presiding hearing officer if the offender has a language or  
38 communications barrier; (iii) testify or remain silent; (iv) call

1 witnesses and present documentary evidence; (v) question witnesses who  
2 appear and testify; and (vi) be represented by counsel if revocation of  
3 the release to community custody upon a finding of violation is a  
4 probable sanction for the violation. The board may not revoke the  
5 release to community custody of any offender who was not represented by  
6 counsel at the hearing, unless the offender has waived the right to  
7 counsel; and

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

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

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

20 **Sec. 3.** RCW 9.96.050 and 2002 c 16 s 3 are each amended to read as  
21 follows:

22 (1)(a) When (~~a prisoner~~) an offender on parole has performed all  
23 obligations of his or her release, including any and all legal  
24 financial obligations, for such time as shall satisfy the indeterminate  
25 sentence review board that his or her final release is not incompatible  
26 with the best interests of society and the welfare of the paroled  
27 individual, the board may make a final order of discharge and issue a  
28 certificate of discharge to the (~~prisoner~~) offender. (~~The~~  
29 ~~certificate of discharge shall be issued to the offender in person or~~  
30 ~~by mail to the prisoner's last known address.~~)

31 (b) The board retains the jurisdiction to issue a certificate of  
32 discharge after the expiration of the offender's or parolee's maximum  
33 statutory sentence. If not earlier granted and any and all legal  
34 financial obligations have been paid, the board shall issue a final  
35 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.

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

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

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

8       (2) The board shall send a copy of every signed certificate of  
9 discharge to the auditor for the county in which the offender was  
10 sentenced and to the department of corrections. The department shall  
11 create and maintain a data base containing the names of all felons who  
12 have been issued certificates of discharge, the date of discharge, and  
13 the date of conviction and offense.

14       ~~((The board retains the jurisdiction to issue a certificate of~~  
15 ~~discharge after the expiration of the prisoner's or parolee's maximum~~  
16 ~~statutory sentence. If not earlier granted, the board shall make a~~  
17 ~~final order of discharge three years from the date of parole unless the~~  
18 ~~parolee is on suspended or revoked status at the expiration of the~~  
19 ~~three years. Such discharge, regardless of when issued, shall have the~~  
20 ~~effect of restoring all civil rights lost by operation of law upon~~  
21 ~~conviction, and the certification of discharge shall so state. This~~  
22 ~~restoration of civil rights shall not restore the right to receive,~~  
23 ~~possess, own, or transport firearms.))~~

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

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