
SUBSTITUTE HOUSE BILL 2957

State of Washington 61st Legislature 2010 Regular Session

By House General Government Appropriations (originally sponsored by Representatives Williams and Darneille; by request of Governor Gregoire)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to transferring the indeterminate sentence review
2 board and its functions to the department of corrections; amending RCW
3 9.95.003, 9.95.005, 9.95.007, 9.95.140, 9.95.280, 9.95.300, 9.96.050,
4 71.05.385, 72.09.585, and 42.17.2401; creating a new section;
5 decodifying RCW 4.24.5502; and providing an effective date.

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

7 **Sec. 1.** RCW 9.95.003 and 2007 c 362 s 1 are each amended to read
8 as follows:

9 The board is created within the department of corrections. The
10 board shall consist of a ((~~chairman~~)) chair and four other members,
11 each of whom shall be appointed by the governor with the consent of the
12 senate. Each member shall hold office for a term of five years, and
13 until his or her successor is appointed and qualified. The terms shall
14 expire on April 15th of the expiration year. Vacancies in the
15 membership of the board shall be filled by appointment by the governor
16 with the consent of the senate. In the event of the inability of any
17 member to act, the governor shall appoint some competent person to act
18 in ((~~his~~)) the member's stead during the continuance of such inability.
19 The members shall not be removable during their respective terms except

1 for cause determined by the superior court of Thurston county. The
2 governor in appointing the members shall designate one of them to serve
3 as (~~chairman~~) chair at the governor's pleasure. The appointed
4 (~~chairman~~) chair shall serve as a fully participating board member
5 (~~and as the director of the agency~~).

6 The members of the board and (~~its officers and employees~~) staff
7 assigned to the board shall not engage in any other business or
8 profession or hold any other public office without the prior approval
9 of the executive ethics board indicating compliance with RCW 42.52.020,
10 42.52.030, 42.52.040 and 42.52.120; nor shall they, at the time of
11 appointment or employment or during their incumbency, serve as the
12 representative of any political party on an executive committee or
13 other governing body thereof, or as an executive officer or employee of
14 any political committee or association. The members of the board shall
15 each severally receive salaries fixed by the governor in accordance
16 with the provisions of RCW 43.03.040, and in addition shall receive
17 travel expenses incurred in the discharge of their official duties in
18 accordance with RCW 43.03.050 and 43.03.060. Employees assigned to the
19 board shall be employees of the department.

20 The (~~board~~) secretary may employ(~~, and fix, with the approval of~~
21 ~~the governor, the compensation of and prescribe the duties of~~) a
22 senior administrative officer and such (~~officers, employees, and~~
23 ~~assistants~~) other personnel as may be necessary(~~, and provide~~
24 ~~necessary quarters, supplies, and equipment~~) to carry out the duties
25 of the board.

26 **Sec. 2.** RCW 9.95.005 and 2001 2nd sp.s. c 12 s 318 are each
27 amended to read as follows:

28 The board shall meet at major state correctional institutions at
29 such times as may be necessary for a full and complete study of the
30 cases of all convicted persons whose durations of confinement are to be
31 determined by it; whose community custody supervision is under the
32 board's authority; or whose applications for parole come before it.
33 Other times and places of meetings may also be fixed by the board.

34 The superintendents of the different institutions shall provide
35 suitable quarters for the board and (~~assistants~~) staff while in the
36 discharge of their duties.

1 **Sec. 3.** RCW 9.95.007 and 1986 c 224 s 5 are each amended to read
2 as follows:

3 The board may meet and transact business in panels. Each board
4 panel shall consist of at least two members of the board. In all
5 matters concerning the internal affairs of the board and policy-making
6 decisions, a majority of the full board must concur in such matters.
7 The (~~chairman~~) chair of the board with the consent of a majority of
8 the board may designate any two members to exercise all the powers and
9 duties of the board in connection with any hearing before the board.
10 If the two members so designated cannot unanimously agree as to the
11 disposition of the hearing assigned to them, such hearing shall be
12 reheard by the full board. All actions of the full board shall be by
13 concurrence of a majority of the sitting board members.

14 **Sec. 4.** RCW 9.95.140 and 2009 c 28 s 29 are each amended to read
15 as follows:

16 (1) The board shall cause a complete record to be kept of every
17 prisoner under the jurisdiction of the board released on parole or
18 community custody. Such records shall be organized in accordance with
19 the most modern methods of filing and indexing so that there will be
20 always immediately available complete information about each such
21 prisoner. Subject to information sharing provisions related to
22 mentally ill offenders(~~(7)~~) and the end of sentence review committee,
23 (~~and the department of corrections,~~) the board may make rules as to
24 the privacy of such records and their use by others than the board and
25 (~~its~~) the department of corrections staff assigned to perform board-
26 related duties. Sex offenders convicted of crimes committed before
27 July 1, 1984, who are under the board's jurisdiction shall be subject
28 to the determinations of the end of sentence review committee regarding
29 risk level and subject to sex offender registration and community
30 notification. The board and the department of corrections staff
31 assigned to perform board-related duties shall be immune from liability
32 for the release of information concerning sex offenders as provided in
33 RCW 4.24.550.

34 The superintendents of state correctional facilities and all
35 officers and employees thereof and all other public officials shall at
36 all times cooperate with the board and furnish to the board(~~(7—its~~
37 ~~officers, and employees)~~) and the department of corrections staff

1 assigned to perform board-related duties such information as may be
2 necessary to enable it to perform its functions, and such
3 superintendents and other employees shall at all times give the members
4 of the board(~~(, its officers, and employees)~~) and the department of
5 corrections staff assigned to perform board-related duties free access
6 to all prisoners confined in the state correctional facilities.

7 (2) Offenders sentenced under RCW 9.94A.507 shall be subject to the
8 determinations of the end of sentence review committee regarding risk
9 level and subject to sex offender registration and community
10 notification.

11 (3) The end of sentence review committee shall make law enforcement
12 notifications for offenders under board jurisdiction on the same basis
13 that it notifies law enforcement regarding offenders sentenced under
14 chapter 9.94A RCW for crimes committed after July 1, 1984.

15 **Sec. 5.** RCW 9.95.280 and 2001 2nd sp.s. c 12 s 344 are each
16 amended to read as follows:

17 The secretary of corrections or the secretary's designee, upon
18 recommendation by the board, may deputize any person (regularly
19 employed by another state) to act as an officer and agent of this state
20 in effecting the return of any person convicted of a crime committed
21 before July 1, 1984, who has violated the terms and conditions of
22 parole or probation as granted by this state. In any matter relating
23 to the return of such a person, any agent so deputized shall have all
24 the powers of a police officer of this state.

25 **Sec. 6.** RCW 9.95.300 and 2001 2nd sp.s. c 12 s 346 are each
26 amended to read as follows:

27 The secretary of corrections or the secretary's designee, upon
28 recommendation by the board, may enter into contracts with (~~(similar)~~)
29 officials of any other state or states for the purpose of sharing an
30 equitable portion of the cost of effecting the return of any person who
31 has violated the terms and conditions of parole, probation, or
32 community custody as granted by this state.

33 **Sec. 7.** RCW 9.96.050 and 2009 c 325 s 4 are each amended to read
34 as follows:

35 (1)(a) When an offender on parole has performed all obligations of

1 his or her release, including any and all legal financial obligations,
2 for such time as shall satisfy the indeterminate sentence review board
3 that his or her final release is not incompatible with the best
4 interests of society and the welfare of the paroled individual, the
5 board may make a final order of discharge and issue a certificate of
6 discharge to the offender.

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

14 (c) The discharge, regardless of when issued, shall have the effect
15 of restoring all civil rights not already restored by RCW 29A.08.520,
16 and the certification of discharge shall so state.

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

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

21 (2) (~~The board shall send to the department of corrections~~) A
22 copy of every signed certificate of discharge for offender sentences
23 under the authority of the department of corrections shall be placed in
24 the department's files.

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

29 **Sec. 8.** RCW 71.05.385 and 2009 c 320 s 2 are each amended to read
30 as follows:

31 (1) A mental health service provider shall release to the persons
32 authorized under subsection (2) of this section, upon request:

33 (a) The fact, place, and date of an involuntary commitment, the
34 fact and date of discharge or release, and the last known address of a
35 person who has been committed under this chapter.

36 (b) Information related to mental health services, in the format

1 determined under subsection (9) of this section, concerning a person
2 who:

3 (i) Is currently committed to the custody or supervision of the
4 department of corrections or the indeterminate sentence review board
5 under chapter 9.94A or 9.95 RCW;

6 (ii) Has been convicted or found not guilty by reason of insanity
7 of a serious violent offense; or

8 (iii) Was charged with a serious violent offense and such charges
9 were dismissed under RCW 10.77.086.

10 Legal counsel may release such information to the persons
11 authorized under subsection (2) of this section on behalf of the mental
12 health service provider, provided that nothing in this subsection shall
13 require the disclosure of attorney work product or attorney-client
14 privileged information.

15 (2) The information subject to release under subsection (1) of this
16 section shall be released to law enforcement officers, personnel of a
17 county or city jail, designated mental health professionals, public
18 health officers, therapeutic court personnel, personnel of the
19 department of corrections, (~~or personnel of~~) including the
20 indeterminate sentence review board and personnel assigned to perform
21 board-related duties, when such information is requested during the
22 course of business and for the purpose of carrying out the
23 responsibilities of the requesting person's office. No mental health
24 service provider or person employed by a mental health service
25 provider, or its legal counsel, shall be liable for information
26 released to or used under the provisions of this section or rules
27 adopted under this section except under RCW 71.05.440.

28 (3) A person who requests information under subsection (1)(b) of
29 this section must comply with the following restrictions:

30 (a) Information must be requested only for the purposes permitted
31 by this subsection and for the purpose of carrying out the
32 responsibilities of the requesting person's office. Appropriate
33 purposes for requesting information under this section include:

34 (i) Completing presentence investigations or risk assessment
35 reports;

36 (ii) Assessing a person's risk to the community;

37 (iii) Assessing a person's risk of harm to self or others when
38 confined in a city or county jail;

1 (iv) Planning for and provision of supervision of an offender,
2 including decisions related to sanctions for violations of conditions
3 of community supervision; and

4 (v) Responding to an offender's failure to report for department of
5 corrections supervision.

6 (b) Information shall not be requested under this section unless
7 the requesting person has reasonable suspicion that the individual who
8 is the subject of the information:

9 (i) Has engaged in activity indicating that a crime or a violation
10 of community custody or parole has been committed or, based upon his or
11 her current or recent past behavior, is likely to be committed in the
12 near future; or

13 (ii) Is exhibiting signs of a deterioration in mental functioning
14 which may make the individual appropriate for civil commitment under
15 this chapter.

16 (c) Any information received under this section shall be held
17 confidential and subject to the limitations on disclosure outlined in
18 this chapter, except:

19 (i) Such information may be shared with other persons who have the
20 right to request similar information under subsection (2) of this
21 section, solely for the purpose of coordinating activities related to
22 the individual who is the subject of the information in a manner
23 consistent with the official responsibilities of the persons involved;

24 (ii) Such information may be shared with a prosecuting attorney
25 acting in an advisory capacity for a person who receives information
26 under this section. A prosecuting attorney under this subsection shall
27 be subject to the same restrictions and confidentiality limitations as
28 the person who requested the information; and

29 (iii) As provided in RCW 72.09.585.

30 (4) A request for information related to mental health services
31 under this section shall not require the consent of the subject of the
32 records. Such request shall be provided in writing, except to the
33 extent authorized in subsection (5) of this section. A written request
34 may include requests made by e-mail or facsimile so long as the
35 requesting person is clearly identified. The request must specify the
36 information being requested.

37 (5) In the event of an emergency situation that poses a significant
38 risk to the public or the offender, a mental health service provider,

1 or its legal counsel, shall release information related to mental
2 health services delivered to the offender and, if known, information
3 regarding where the offender is likely to be found to the department of
4 corrections or law enforcement upon request. The initial request may
5 be written or oral. All oral requests must be subsequently confirmed
6 in writing. Information released in response to an oral request is
7 limited to a statement as to whether the offender is or is not being
8 treated by the mental health service provider and the address or
9 information about the location or whereabouts of the offender.

10 (6) Disclosure under this section to state or local law enforcement
11 authorities is mandatory for the purposes of the health insurance
12 portability and accountability act.

13 (7) Whenever federal law or federal regulations restrict the
14 release of information contained in the treatment records of any
15 patient who receives treatment for alcoholism or drug dependency, the
16 release of the information may be restricted as necessary to comply
17 with federal law and regulations.

18 (8) This section does not modify the terms and conditions of
19 disclosure of information related to sexually transmitted diseases
20 under chapter 70.24 RCW.

21 (9) In collaboration with interested organizations, the department
22 shall develop a standard form for requests for information related to
23 mental health services made under this section and a standard format
24 for information provided in response to such requests. Consistent with
25 the goals of the health information privacy provisions of the federal
26 health insurance portability and accountability act, in developing the
27 standard form for responsive information, the department shall design
28 the form in such a way that the information disclosed is limited to the
29 minimum necessary to serve the purpose for which the information is
30 requested.

31 **Sec. 9.** RCW 72.09.585 and 2004 c 166 s 5 are each amended to read
32 as follows:

33 (1) When the department is determining an offender's risk
34 management level, the department shall inquire of the offender and
35 shall be told whether the offender is subject to court-ordered
36 treatment for mental health services or chemical dependency services.
37 The department shall request and the offender shall provide an

1 authorization to release information form that meets applicable state
2 and federal requirements and shall provide the offender with written
3 notice that the department will request the offender's mental health
4 and substance abuse treatment information. An offender's failure to
5 inform the department of court-ordered treatment is a violation of the
6 conditions of supervision if the offender is in the community and an
7 infraction if the offender is in confinement, and the violation or
8 infraction is subject to sanctions.

9 (2) When an offender discloses that he or she is subject to court-
10 ordered mental health services or chemical dependency treatment, the
11 department shall provide the mental health services provider or
12 chemical dependency treatment provider with a written request for
13 information and any necessary authorization to release information
14 forms. The written request shall comply with rules adopted by the
15 department of social and health services or protocols developed jointly
16 by the department and the department of social and health services. A
17 single request shall be valid for the duration of the offender's
18 supervision in the community. Disclosures of information related to
19 mental health services made pursuant to a department request shall not
20 require consent of the offender.

21 (3) The information received by the department under RCW 71.05.445
22 or (~~(71.34.225)~~) 71.34.345 may be released to the indeterminate
23 sentence review board as relevant to carry out its responsibility of
24 planning and ensuring community protection with respect to persons
25 under its jurisdiction. Further disclosure by the indeterminate
26 sentence review board is subject to the limitations set forth in
27 subsections (5) and (6) of this section and must be consistent with the
28 written policy of the indeterminate sentence review board. The
29 decision to disclose or not shall not result in civil liability for the
30 indeterminate sentence review board or (~~(its employees)~~) staff assigned
31 to perform board-related duties provided that the decision was reached
32 in good faith and without gross negligence.

33 (4) The information received by the department under RCW 71.05.445
34 or (~~(71.34.225)~~) 71.34.345 may be used to meet the statutory duties of
35 the department to provide evidence or report to the court. Disclosure
36 to the public of information provided to the court by the department
37 related to mental health services shall be limited in accordance with
38 RCW 9.94A.500 or this section.

1 (5) The information received by the department under RCW 71.05.445
2 or ((~~71.34.225~~)) 71.34.345 may be disclosed by the department to other
3 state and local agencies as relevant to plan for and provide offenders
4 transition, treatment, and supervision services, or as relevant and
5 necessary to protect the public and counteract the danger created by a
6 particular offender, and in a manner consistent with the written policy
7 established by the secretary. The decision to disclose or not shall
8 not result in civil liability for the department or its employees so
9 long as the decision was reached in good faith and without gross
10 negligence. The information received by a state or local agency from
11 the department shall remain confidential and subject to the limitations
12 on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and,
13 subject to these limitations, may be released only as relevant and
14 necessary to counteract the danger created by a particular offender.

15 (6) The information received by the department under RCW 71.05.445
16 or ((~~71.34.225~~)) 71.34.345 may be disclosed by the department to
17 individuals only with respect to offenders who have been determined by
18 the department to have a high risk of reoffending by a risk assessment,
19 as defined in RCW 9.94A.030, only as relevant and necessary for those
20 individuals to take reasonable steps for the purpose of self-
21 protection, or as provided in RCW 72.09.370(2). The information may
22 not be disclosed for the purpose of engaging the public in a system of
23 supervision, monitoring, and reporting offender behavior to the
24 department. The department must limit the disclosure of information
25 related to mental health services to the public to descriptions of an
26 offender's behavior, risk he or she may present to the community, and
27 need for mental health treatment, including medications, and shall not
28 disclose or release to the public copies of treatment documents or
29 records, except as otherwise provided by law. All disclosure of
30 information to the public must be done in a manner consistent with the
31 written policy established by the secretary. The decision to disclose
32 or not shall not result in civil liability for the department or its
33 employees so long as the decision was reached in good faith and without
34 gross negligence. Nothing in this subsection prevents any person from
35 reporting to law enforcement or the department behavior that he or she
36 believes creates a public safety risk.

1 **Sec. 10.** RCW 42.17.2401 and 2009 c 565 s 24 are each amended to
2 read as follows:

3 For the purposes of RCW 42.17.240, the term "executive state
4 officer" includes:

5 (1) The chief administrative law judge, the director of
6 agriculture, the administrator of the Washington basic health plan, the
7 director of the department of services for the blind, the director of
8 the state system of community and technical colleges, the director of
9 commerce, the secretary of corrections, the director of early learning,
10 the director of ecology, the commissioner of employment security, the
11 chair of the energy facility site evaluation council, the secretary of
12 the state finance committee, the director of financial management, the
13 director of fish and wildlife, the executive secretary of the forest
14 practices appeals board, the director of the gambling commission, the
15 director of general administration, the secretary of health, the
16 administrator of the Washington state health care authority, the
17 executive secretary of the health care facilities authority, the
18 executive secretary of the higher education facilities authority, the
19 executive secretary of the horse racing commission, the executive
20 secretary of the human rights commission, (~~the executive secretary of~~
21 ~~the indeterminate sentence review board,~~) the director of the
22 department of information services, the executive director of the state
23 investment board, the director of labor and industries, the director of
24 licensing, the director of the lottery commission, the director of the
25 office of minority and women's business enterprises, the director of
26 parks and recreation, the director of personnel, the executive director
27 of the public disclosure commission, the executive director of the
28 Puget Sound partnership, the director of the recreation and
29 conservation office, the director of retirement systems, the director
30 of revenue, the secretary of social and health services, the chief of
31 the Washington state patrol, the executive secretary of the board of
32 tax appeals, the secretary of transportation, the secretary of the
33 utilities and transportation commission, the director of veterans
34 affairs, the president of each of the regional and state universities
35 and the president of The Evergreen State College, and each district and
36 each campus president of each state community college;

37 (2) Each professional staff member of the office of the governor;

38 (3) Each professional staff member of the legislature; and

1 (4) Central Washington University board of trustees, the boards of
2 trustees of each community college and each technical college, each
3 member of the state board for community and technical colleges, state
4 convention and trade center board of directors, committee for deferred
5 compensation, Eastern Washington University board of trustees,
6 Washington economic development finance authority, The Evergreen State
7 College board of trustees, executive ethics board, forest practices
8 appeals board, forest practices board, gambling commission, life
9 sciences discovery fund authority board of trustees, Washington health
10 care facilities authority, each member of the Washington health
11 services commission, higher education coordinating board, higher
12 education facilities authority, horse racing commission, state housing
13 finance commission, human rights commission, indeterminate sentence
14 review board, board of industrial insurance appeals, information
15 services board, recreation and conservation funding board, state
16 investment board, commission on judicial conduct, legislative ethics
17 board, liquor control board, lottery commission, marine oversight
18 board, Pacific Northwest electric power and conservation planning
19 council, parks and recreation commission, board of pilotage
20 commissioners, pollution control hearings board, public disclosure
21 commission, public pension commission, shorelines hearings board,
22 public employees' benefits board, salmon recovery funding board, board
23 of tax appeals, transportation commission, University of Washington
24 board of regents, utilities and transportation commission, Washington
25 state maritime commission, Washington personnel resources board,
26 Washington public power supply system executive board, Washington State
27 University board of regents, Western Washington University board of
28 trustees, and fish and wildlife commission.

29 NEW SECTION. **Sec. 11.** RCW 4.24.5502 is decodified.

30 NEW SECTION. **Sec. 12.** (1) The indeterminate sentence review board
31 is transferred to the department of corrections.

32 (2)(a) All reports, documents, surveys, books, records, files,
33 papers, or written material in the possession of the indeterminate
34 sentence review board shall be delivered to the custody of the
35 department of corrections. All cabinets, furniture, office equipment,
36 motor vehicles, and other tangible property employed by the

1 indeterminate sentence review board shall be made available to the
2 department of corrections. All funds, credits, or other assets held by
3 the indeterminate sentence review board shall be assigned to the
4 department of corrections.

5 (b) Any appropriations made to the indeterminate sentence review
6 board shall, on the effective date of this section, be transferred and
7 credited to the department of corrections.

8 (c) If any question arises as to the transfer of any personnel,
9 funds, books, documents, records, papers, files, equipment, or other
10 tangible property used or held in the exercise of the powers and the
11 performance of the duties and functions transferred, the director of
12 financial management shall make a determination as to the proper
13 allocation and certify the same to the state agencies concerned.

14 (3) All employees of the indeterminate sentence review board are
15 transferred to the jurisdiction of the department of corrections. All
16 employees classified under chapter 41.06 RCW, the state civil service
17 law, are assigned to the department of corrections to perform their
18 usual duties upon the same terms as formerly, without any loss of
19 rights, subject to any action that may be appropriate thereafter in
20 accordance with the laws and rules governing state civil service.

21 (4) All rules and all pending business before the indeterminate
22 sentence review board shall be continued and acted upon by the
23 department of corrections. All existing contracts and obligations
24 shall remain in full force and shall be performed by the department of
25 corrections.

26 (5) The transfer of the powers, duties, functions, and personnel of
27 the indeterminate sentence review board shall not affect the validity
28 of any act performed before the effective date of this section.

29 (6) If apportionments of budgeted funds are required because of the
30 transfers directed by this section, the director of financial
31 management shall certify the apportionments to the agencies affected,
32 the state auditor, and the state treasurer. Each of these shall make
33 the appropriate transfer and adjustments in funds and appropriation
34 accounts and equipment records in accordance with the certification.

35 (7) All classified employees of the indeterminate sentence review
36 board assigned to the department of corrections under this act whose
37 positions are within an existing bargaining unit description at the
38 department of corrections shall become a part of the existing

1 bargaining unit at the department of corrections and shall be
2 considered an appropriate inclusion or modification of the existing
3 bargaining unit under the provisions of chapter 41.80 RCW.

4 (8) Notwithstanding any provision of this act and despite the
5 transfer of the indeterminate sentence review board to the department
6 of corrections, the members of the indeterminate sentence review board
7 will possess and shall exercise independent judgment when making any
8 decisions concerning offenders. These decisions include but are not
9 limited to decisions concerning offenders' release, revocation,
10 reinstatement, or the imposition of conditions of supervision.

11 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2010.

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