
SENATE BILL 5036

State of Washington

67th Legislature

2021 Regular Session

By Senator Dhingra

Prefiled 12/24/20.

1 AN ACT Relating to conditional commutation by the clemency and
2 pardons board; amending RCW 9.94A.501, 9.94A.565, 9.94A.633,
3 9.94A.728, and 9.94A.880; reenacting and amending RCW 9.94A.885;
4 adding a new section to chapter 9.94A RCW; creating a new section;
5 and providing an expiration date.

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

7 **Sec. 1.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to
8 read as follows:

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

12 (a) Offenders convicted of:

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

14 (ii) Custodial sexual misconduct second degree;

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

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

17 (b) Offenders who have:

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

1 (ii) A prior conviction for a repetitive domestic violence
2 offense or domestic violence felony offense where domestic violence
3 has been pleaded and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by the
5 department pursuant to this section shall be placed on community
6 custody.

7 (3) The department shall supervise every felony offender
8 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
9 whose risk assessment classifies the offender as one who is at a high
10 risk to reoffend.

11 (4) Notwithstanding any other provision of this section, the
12 department shall supervise an offender sentenced to community custody
13 regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious
15 violent offense and was sentenced to a term of community custody
16 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

17 (b) Has been identified by the department as a dangerous mentally
18 ill offender pursuant to RCW 72.09.370;

19 (c) Has an indeterminate sentence and is subject to parole
20 pursuant to RCW 9.95.017;

21 (d) Has a current conviction for violating RCW 9A.44.132(1)
22 (failure to register) and was sentenced to a term of community
23 custody pursuant to RCW 9.94A.701;

24 (e)(i) Has a current conviction for a domestic violence felony
25 offense where domestic violence has been pleaded and proven after
26 August 1, 2011, and a prior conviction for a repetitive domestic
27 violence offense or domestic violence felony offense where domestic
28 violence was pleaded and proven after August 1, 2011. This subsection
29 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

30 (ii) Has a current conviction for a domestic violence felony
31 offense where domestic violence was pleaded and proven. The state and
32 its officers, agents, and employees shall not be held criminally or
33 civilly liable for its supervision of an offender under this
34 subsection (4)(e)(ii) unless the state and its officers, agents, and
35 employees acted with gross negligence;

36 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
37 9.94A.670, or 9.94A.711;

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

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

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

8 (6) The department shall supervise any individual granted
9 conditional commutation pursuant to RCW 9.94A.885.

10 (7) The department is not authorized to, and may not, supervise
11 any offender sentenced to a term of community custody or any
12 probationer unless the offender or probationer is one for whom
13 supervision is required under this section (~~(or RCW 9.94A.5011)~~).

14 ~~((7))~~ (8) The department shall conduct a risk assessment for
15 every felony offender sentenced to a term of community custody who
16 may be subject to supervision under this section (~~(or RCW~~
17 ~~9.94A.5011)~~).

18 ~~((8))~~ (9) The period of time the department is authorized to
19 supervise an offender under this section may not exceed the duration
20 of community custody specified under RCW 9.94B.050, 9.94A.701 (1)
21 through (8), or 9.94A.702, except in cases where the court has
22 imposed an exceptional term of community custody under RCW 9.94A.535.

23 ~~((9))~~ (10) The period of time the department is authorized to
24 supervise an offender under this section may be reduced by the earned
25 award of supervision compliance credit pursuant to RCW 9.94A.717.

26 **Sec. 2.** RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read
27 as follows:

28 (1) Nothing in this chapter (~~(1, Laws of 1994)~~) or chapter 10.95
29 RCW shall ever be interpreted or construed as to reduce or eliminate
30 the power of the governor to grant a pardon or clemency to any
31 offender on an individual case-by-case basis. However, the people
32 recommend that ~~((any))~~ :

33 (a) Any offender subject to total confinement for life without
34 the possibility of parole not be considered for release until the
35 offender has ~~((reached the age of at least sixty years old))~~ served
36 at least 20 years in total confinement and has been judged to ~~((be))~~
37 no longer be a threat to society (~~(. The people further recommend that~~
38 ~~sex))~~ ;

1 **(b) Sex** offenders be held to the utmost scrutiny under this
2 subsection regardless of age; and

3 **(c) Release take the form of a conditional commutation that**
4 includes a period of law-abiding behavior in the community.

5 (2) Nothing in this section shall ever be interpreted or
6 construed to grant any release for the purpose of reducing prison
7 overcrowding. Furthermore, the governor shall provide twice yearly
8 reports on the activities and progress of offenders subject to total
9 confinement for life without the possibility of parole who are
10 released through executive action during his or her tenure. These
11 reports shall continue for not less than (~~ten~~) 10 years after the
12 release of the offender or upon the death of the released offender.

13 **Sec. 3.** RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each
14 amended to read as follows:

15 (1) (a) An offender who violates any condition or requirement of a
16 sentence may be sanctioned by the court with up to (~~sixty~~) 60 days'
17 confinement for each violation or by the department with up to
18 (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

19 (b) In lieu of confinement, an offender may be sanctioned with
20 work release, home detention with electronic monitoring, work crew,
21 community restitution, inpatient treatment, daily reporting, curfew,
22 educational or counseling sessions, supervision enhanced through
23 electronic monitoring, or any other community-based sanctions.

24 (2) If an offender was under community custody pursuant to one of
25 the following statutes, the offender may be sanctioned as follows:

26 (a) If the offender was transferred to community custody in lieu
27 of earned early release in accordance with RCW 9.94A.728, the
28 offender may be transferred to a more restrictive confinement status
29 to serve up to the remaining portion of the sentence, less credit for
30 any period actually spent in community custody or in detention
31 awaiting disposition of an alleged violation.

32 (b) If the offender was sentenced under the drug offender
33 sentencing alternative set out in RCW 9.94A.660, the offender may be
34 sanctioned in accordance with that section.

35 (c) If the offender was sentenced under the parenting sentencing
36 alternative set out in RCW 9.94A.655, the offender may be sanctioned
37 in accordance with that section.

38 (d) If the offender was sentenced under the special sex offender
39 sentencing alternative set out in RCW 9.94A.670, the suspended

1 sentence may be revoked and the offender committed to serve the
2 original sentence of confinement.

3 (e) If the offender was sentenced to a work ethic camp pursuant
4 to RCW 9.94A.690, the offender may be reclassified to serve the
5 unexpired term of his or her sentence in total confinement.

6 (f) If a sex offender was sentenced pursuant to RCW 9.94A.507,
7 the offender may be transferred to a more restrictive confinement
8 status to serve up to the remaining portion of the sentence, less
9 credit for any period actually spent in community custody or in
10 detention awaiting disposition of an alleged violation.

11 (g) If the offender was granted conditional commutation pursuant
12 to RCW 9.94A.885, the offender may be transferred to a more
13 restrictive confinement status to serve up to the remaining portion
14 of the sentence, less credit for any period actually spent in
15 community custody or in detention awaiting disposition of an alleged
16 violation.

17 (3) If a probationer is being supervised by the department
18 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may
19 be sanctioned pursuant to subsection (1) of this section. The
20 department shall have authority to issue a warrant for the arrest of
21 an offender who violates a condition of community custody, as
22 provided in RCW 9.94A.716. Any sanctions shall be imposed by the
23 department pursuant to RCW 9.94A.737. Nothing in this subsection is
24 intended to limit the power of the sentencing court to respond to a
25 probationer's violation of conditions.

26 (4) The parole or probation of an offender who is charged with a
27 new felony offense may be suspended and the offender placed in total
28 confinement pending disposition of the new criminal charges if:

29 (a) The offender is on parole pursuant to RCW 9.95.110(1); or

30 (b) The offender is being supervised pursuant to RCW 9.94A.745
31 and is on parole or probation pursuant to the laws of another state.

32 **Sec. 4.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to
33 read as follows:

34 (1) No person serving a sentence imposed pursuant to this chapter
35 and committed to the custody of the department shall leave the
36 confines of the correctional facility or be released prior to the
37 expiration of the sentence except as follows:

38 (a) An offender may earn early release time as authorized by RCW
39 9.94A.729;

1 (b) An offender may leave a correctional facility pursuant to an
2 authorized furlough or leave of absence. In addition, offenders may
3 leave a correctional facility when in the custody of a corrections
4 officer or officers;

5 (c) (i) The secretary may authorize an extraordinary medical
6 placement for an offender when all of the following conditions exist:

7 (A) The offender has a medical condition that is serious and is
8 expected to require costly care or treatment;

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

12 (C) It is expected that granting the extraordinary medical
13 placement will result in a cost savings to the state.

14 (ii) An offender sentenced to death or to life imprisonment
15 without the possibility of release or parole is not eligible for an
16 extraordinary medical placement.

17 (iii) The secretary shall require electronic monitoring for all
18 offenders in extraordinary medical placement unless the electronic
19 monitoring equipment interferes with the function of the offender's
20 medical equipment or results in the loss of funding for the
21 offender's medical care, in which case, an alternative type of
22 monitoring shall be utilized. The secretary shall specify who shall
23 provide the monitoring services and the terms under which the
24 monitoring shall be performed.

25 (iv) The secretary may revoke an extraordinary medical placement
26 under this subsection (1) (c) at any time.

27 (v) Persistent offenders are not eligible for extraordinary
28 medical placement;

29 (d) The governor, upon recommendation from the clemency and
30 pardons board, may grant ~~((an extraordinary))~~:

31 (i) Extraordinary release for reasons of serious health problems,
32 senility, advanced age, extraordinary meritorious acts, or other
33 extraordinary circumstances; or

34 (ii) Conditional commutation pursuant to section 7 of this act;

35 (e) No more than the final ~~((twelve))~~ 12 months of the offender's
36 term of confinement may be served in partial confinement for aiding
37 the offender with: Finding work as part of the work release program
38 under chapter 72.65 RCW; or reestablishing himself or herself in the
39 community as part of the parenting program in RCW 9.94A.6551. This is

1 in addition to that period of earned early release time that may be
2 exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

3 (f) No more than the final six months of the offender's term of
4 confinement may be served in partial confinement as home detention as
5 part of the graduated reentry program developed by the department
6 under RCW 9.94A.733;

7 (g) The governor may pardon any offender;

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

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

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

20 (k) Any person convicted of one or more crimes committed prior to
21 the person's (~~eighteenth~~) 18th birthday may be released from
22 confinement pursuant to RCW 9.94A.730.

23 (2) Offenders residing in a juvenile correctional facility
24 placement pursuant to RCW 72.01.410(1)(a) are not subject to the
25 limitations in this section.

26 **Sec. 5.** RCW 9.94A.880 and 2011 c 336 s 335 are each amended to
27 read as follows:

28 (1) The clemency and pardons board is established as a board
29 within the office of the governor. The board consists of (~~five~~) 10
30 members appointed by the governor, subject to confirmation by the
31 senate.

32 (2) Board membership must consist of the following:

33 (a) A representative of a statewide or local organization
34 representing communities of color or race equity;

35 (b) A representative of an agency representing crime victims;

36 (c) A representative of an association, community organization,
37 or advocacy group with experience or interest in the formerly
38 incarcerated with successful community reentry;

1 (d) A representative of a faith-based organization with interest
2 and experience in successful community reentry;

3 (e) A representative of a statewide organization representing
4 criminal defense lawyers;

5 (f) A law enforcement professional;

6 (g) A representative of a statewide organization representing
7 prosecuting attorneys;

8 (h) A person with experience and interest in tribal affairs;

9 (i) A behavioral health professional; and

10 (j) A retired superior court judge.

11 (3) Board members must understand the principles of racial equity
12 and restorative justice.

13 (4) Members of the board shall serve terms of (~~four~~) five years
14 (~~and~~), but may serve more than one term until their successors are
15 appointed and confirmed. (~~However, the~~) The governor shall stagger
16 the initial terms (~~by appointing one of the initial members for a~~
17 ~~term of one year, one for a term of two years, one for a term of~~
18 ~~three years, and two for terms of four years~~) so that no more than
19 three members are up for appointment in any given year.

20 (~~3~~) (5) The board shall elect a chair from among its members
21 and shall adopt bylaws governing the operation of the board.

22 (~~4~~) (6) Members of the board shall (~~receive no compensation~~
23 ~~but shall be reimbursed for travel expenses as provided in RCW~~
24 ~~43.03.050 and 43.03.060 as now existing or hereafter amended~~) each
25 severally receive salaries fixed by the governor in accordance with
26 the provisions of RCW 43.03.040, unless waived by the member. All
27 members shall receive travel expenses incurred in the discharge of
28 their official duties in accordance with RCW 43.03.050 and 43.03.060.

29 (7) The board shall be funded adequate personnel to implement and
30 maintain functional operations such as support, records, victim
31 liaisons, and information technology.

32 (~~5~~) (8) The attorney general shall provide (~~a staff as~~
33 ~~needed for the operation of~~) legal counsel to the board.

34 **Sec. 6.** RCW 9.94A.885 and 2009 c 325 s 6 and 2009 c 138 s 4 are
35 each reenacted and amended to read as follows:

36 (1) The clemency and pardons board shall receive petitions from
37 individuals, organizations, and the department and make
38 recommendations to the governor for (~~review and commutation~~):

1 (a) Commutation of sentences and pardoning of offenders in
2 extraordinary cases ~~((7))~~; and ~~((shall make recommendations thereon to~~
3 ~~the governor))~~

4 (b) Conditional commutation of sentences pursuant to section 7 of
5 this act.

6 (2) The board shall receive petitions from individuals or
7 organizations for the restoration of civil rights lost by operation
8 of state law as a result of convictions for federal offenses or out-
9 of-state felonies. The board may issue certificates of restoration
10 limited to engaging in political office. Any certifications granted
11 by the board must be filed with the secretary of state to be
12 effective. In all other cases, the board shall make recommendations
13 to the governor.

14 (3) The board shall not recommend that the governor grant
15 clemency or conditional commutation under subsection (1) of this
16 section until a public hearing has been held on the petition. The
17 board shall consider statements of victims and survivors of victims
18 presented as set forth in RCW 7.69.032, as well as any statements
19 from the law enforcement agency or agencies that conducted the
20 investigation.

21 (4) (a) The prosecuting attorney of the county where the
22 conviction was obtained shall be notified at least ~~((thirty))~~ 90 days
23 prior to the scheduled hearing that a petition has been filed and the
24 date and place at which the hearing on the petition will be held. The
25 board may waive the ~~((thirty-day))~~ 90-day notice requirement in cases
26 where it determines that waiver is necessary to permit timely action
27 on the petition. A copy of the petition shall be sent to the
28 prosecuting attorney. ~~((The prosecuting attorney shall make~~
29 ~~reasonable efforts to notify victims, survivors of victims,~~
30 ~~witnesses, and the law enforcement agency or agencies that conducted~~
31 ~~the investigation, of the date and place of the hearing.))~~

32 (b) To facilitate victim and survivor of victim involvement,
33 county prosecutor's offices shall make reasonable efforts to ensure
34 that any victim impact statements and known contact information for
35 victims of record and survivors of victims are forwarded as part of
36 the judgment and sentence. In the event that no known victim or
37 survivor of the victim is known or identified for the panel, the
38 county prosecutor's office shall be given reasonable time to certify
39 to the panel that it has exhausted all reasonable efforts in locating
40 and providing contact information to the panel. Information regarding

1 victims, survivors of victims, or witnesses receiving this notice are
2 confidential and shall not be available to the offender. ((The board
3 shall consider statements presented as set forth in RCW 7.69.032.))

4 (c) This subsection is intended solely for the guidance of the
5 board. Nothing in this section is intended or may be relied upon to
6 create a right or benefit, substantive or procedural, enforceable at
7 law by any person.

8 (5) (a) The board may recommend conditions of commutation for any
9 individual released pursuant to this section, including a term of
10 community custody up to the length of the court-imposed term of
11 incarceration, partial confinement up to six months, restrictions on
12 travel, no contact with certain persons or classes of persons,
13 restrictions on the type of employment and any other restrictions
14 that the board determines to be reasonable and appropriate, or any
15 other condition which provides for community protection from the
16 released individual.

17 (b) The department shall monitor the released individual's
18 compliance with conditions of community custody imposed by the court
19 or recommended by the board. Any violation of conditions of community
20 custody is subject to the provisions of this chapter.

21 (6) The governor may revoke an order granting conditional
22 commutation at any time.

23 (7) Members of the board are not civilly liable for decisions
24 made while performing their duties.

25 NEW SECTION. Sec. 7. A new section is added to chapter 9.94A
26 RCW to read as follows:

27 (1) Notwithstanding any other provision of this chapter, a person
28 may petition the board for conditional commutation if the person:

29 (a) Is not subject to the jurisdiction of the indeterminate
30 sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the
31 person's offense was committed prior to July 1, 1984;

32 (b) Has served at least 20 consecutive years of total
33 confinement;

34 (c) Consents to a review of all of his or her medical, mental
35 health, and department files by the board; and

36 (d) Does not have any current appeals pending or collateral
37 attacks pending on the case for which the person is seeking
38 conditional commutation.

1 (2) No later than five years prior to the date the person will be
2 eligible to petition for release, the department shall:

3 (a) Notify the person regarding his or her eligibility under this
4 section; and

5 (b) Conduct an assessment of the person and identify programming
6 and services that would be appropriate to prepare the person for
7 return to the community. To the extent possible, the department shall
8 make programming available as identified by the assessment.

9 (3) If the person has a prior known or diagnosed decreased
10 cognitive function or developmental disability, or a decreased
11 cognitive function or developmental disability is determined during
12 the assessment process as outlined in subsection (2)(b) of this
13 section, the department shall assist the person with the process of
14 applying for review by the board or refer to additional services for
15 such assistance.

16 (4) No later than 180 days from the date that the person submits
17 his or her petition for conditional commutation to the board, the
18 department shall conduct, and the person shall participate in, an
19 examination of the person, incorporating methodologies that are
20 evidence-based, normed on the specific gender of the offender, and
21 recognized by experts in the prediction of dangerousness, and
22 including a prediction of the probability that the person will engage
23 in future criminal behavior if released on conditions to be set by
24 the board. The board may consider a person's failure to participate
25 in an evaluation under this subsection in determining whether to
26 release the person.

27 (5) The board shall recommend the person be released under such
28 affirmative and other conditions as the panel determines appropriate,
29 unless the panel determines by a preponderance of the evidence that,
30 despite such conditions, it is more likely than not that the person
31 will commit new criminal law violations if released.

32 (6) The board may take any of the following actions: Deny a
33 petition without a hearing because the person does not meet the
34 initial criteria for filing a petition; or conduct a hearing in
35 accordance with RCW 9.94A.885 to consider additional information, and
36 then deny the petition or recommend conditional commutation to the
37 governor.

38 (7) In making its decision, the board shall consider, if
39 available, the following factors and information:

40 (a) Public safety;

- 1 (b) The person's criminal history;
- 2 (c) The nature and circumstances of the offenses committed,
3 including the current and past offenses;
- 4 (d) The person's social and medical history;
- 5 (e) Evidence of the person's remorse, atonement, and self-
6 reflection in relation to the offense committed, including any
7 efforts to participate in the department's victim offender dialogue
8 program. If the individual submitted an Alford plea, the board shall
9 take into consideration the impact that may have on an individual's
10 ability to provide evidence of remorse and atonement;
- 11 (f) Evidence of the person's rehabilitation, including behavior
12 while incarcerated, job history, education participation in available
13 rehabilitative program and treatment, and infraction history;
- 14 (g) Statements of correctional staff, program supervisors, and
15 volunteer facilitators regarding the person;
- 16 (h) Input from the victims of the crime;
- 17 (i) Input from the police and prosecutors in the jurisdictions
18 where the person's crimes were committed;
- 19 (j) Input from persons in the community pledging their support of
20 the person, if released;
- 21 (k) The available resources in the community to help the person
22 transition to life outside of prison;
- 23 (l) A risk assessment and psychological evaluation provided by
24 the department;
- 25 (m) The sentencing judge's analysis in imposing an exceptional
26 sentence, if any; and
- 27 (n) Any other relevant factors.
- 28 (8) Further, the board shall consider a release plan presented by
29 the person showing where the person will reside and how he or she
30 will support himself or herself during the first year after his or
31 her release. The department shall independently review the proposed
32 release plan and make an independent evaluation to ensure the person
33 is not released to an area where the victim resides or that impacts
34 community safety.
- 35 (9) If the board recommends commutation or denies the petition,
36 it shall specify the reasons for the decision.
- 37 (10) The conditions for conditional commutation may include:
38 Partial confinement for up to six months, regular drug and/or alcohol
39 testing, no violations of law, restrictions on travel, no contact
40 with certain individuals or classes of individuals, restrictions on

1 the type of employment and any other restrictions that the board
2 determines to be reasonable and appropriate, or any other condition
3 which provides for community protection from the released person.

4 (11) A person whose petition for conditional commutation is
5 denied may file a new petition for conditional commutation three
6 years from the date of denial or at an earlier date as may be set by
7 the board.

8 (12) The person does not have a right to appointed counsel. Both
9 lawyers and nonlawyers may assist the person in the preparation of
10 his or her petition and at the hearing.

11 (13) All information contained in a petition or that is submitted
12 to the board is subject to public disclosure.

13 (14) The board may adopt rules setting out criteria and
14 procedures for the review of petitions under this section and RCW
15 9.94A.885 as appropriate.

16 (15) For purposes of this section, "board" means the clemency and
17 pardons board.

18 NEW SECTION. **Sec. 8.** (1) Chapter 187, Laws of 2019 removed
19 robbery in the second degree as a most serious offense in sentencing
20 a person as a persistent offender. At that time, the legislature
21 declined to require resentencing of individuals serving a life
22 sentence as the result of a conviction for robbery in the second
23 degree. The legislature recognizes the need to balance considerations
24 that may have gone into the original charging decision and the
25 inequities that may have resulted from including robbery in the
26 second degree as a third strike offense.

27 (2) In exercising its duties under RCW 9.94A.885 and section 7 of
28 this act, the clemency and pardons board shall give priority
29 consideration to individuals who petition for conditional commutation
30 and who have a current or past conviction for robbery in the second
31 degree that was used as a basis for a finding that the individual was
32 a persistent offender.

33 (3) This section expires December 31, 2024.

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