
SENATE BILL 5749

State of Washington

58th Legislature

2003 Regular Session

By Senators Hargrove, Stevens and Rasmussen; by request of Indeterminate Sentence Review Board

Read first time 02/10/2003. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to hearings concerning violations by sex offenders
2 of postrelease conditions; and amending RCW 9.95.435.

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

4 **Sec. 1.** RCW 9.95.435 and 2002 c 175 s 17 are each amended to read
5 as follows:

6 (1) If an offender released by the board under RCW 9.95.420
7 violates any condition or requirement of community custody, the board
8 may transfer the offender to a more restrictive confinement status to
9 serve up to the remaining portion of the sentence, less credit for any
10 period actually spent in community custody or in detention awaiting
11 disposition of an alleged violation and subject to the limitations of
12 subsection (2) of this section.

13 (2) Following the hearing specified in subsection (3) of this
14 section, the board may impose sanctions such as work release, home
15 detention with electronic monitoring, work crew, community restitution,
16 inpatient treatment, daily reporting, curfew, educational or counseling
17 sessions, supervision enhanced through electronic monitoring, or any
18 other sanctions available in the community, or may suspend or revoke

1 the release to community custody whenever an offender released by the
2 board under RCW 9.95.420 violates any condition or requirement of
3 community custody.

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

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

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

22 (b) The board shall provide the offender with written notice of the
23 violation, the evidence relied upon, and the reasons the particular
24 sanction was imposed. The notice shall include a statement of the
25 rights specified in this subsection, and the offender's right to file
26 a personal restraint petition under court rules after the final
27 decision of the board;

28 (c) The hearing shall be held unless waived by the offender, and
29 shall be electronically recorded. For offenders not in total
30 confinement, the hearing shall be held within (~~fifteen working~~)
31 thirty days of service of notice of the violation, but not less than
32 twenty-four hours after notice of the violation. For offenders in
33 total confinement, the hearing shall be held within (~~five working~~)
34 thirty days of service of notice of the violation, but not less than
35 twenty-four hours after notice of the violation;

36 (d) The offender shall have the right to: (i) Be present at the
37 hearing; (ii) have the assistance of a person qualified to assist the
38 offender in the hearing, appointed by the hearing examiner if the

1 offender has a language or communications barrier; (iii) testify or
2 remain silent; (iv) call witnesses and present documentary evidence;
3 (v) question witnesses who appear and testify; and (vi) be represented
4 by counsel if revocation of the release to community custody upon a
5 finding of violation is a (~~possible~~) probable sanction for the
6 violation; and

7 (e) The sanction shall take effect if affirmed by the hearing
8 examiner. Within seven days after the hearing examiner's decision, the
9 offender may appeal the decision to a panel of three reviewing
10 examiners designated by the chair of the board or by the chair's
11 designee. The sanction shall be reversed or modified if a majority of
12 the panel finds that the sanction was not reasonably related to any of
13 the following: (i) The crime of conviction; (ii) the violation
14 committed; (iii) the offender's risk of reoffending; or (iv) the safety
15 of the community.

16 (5) For purposes of this section, no finding of a violation of
17 conditions may be based on unconfirmed or unconfirmable allegations.

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