

SHB 2407 - S COMM AMD

By Committee on Human Services & Corrections

OUT OF ORDER 02/28/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.713 and 2001 2nd sp.s. c 12 s 304 are each
4 amended to read as follows:

5 (1) When an offender is sentenced under RCW 9.94A.712, the
6 department shall assess the offender's risk of recidivism and shall
7 recommend to the board any additional or modified conditions of the
8 offender's community custody based upon the risk to community safety.
9 In addition, the department shall make a recommendation with regard to,
10 and the board may require the offender to participate in,
11 rehabilitative programs, or otherwise perform affirmative conduct, and
12 obey all laws. The department may recommend and the board may impose
13 electronic monitoring as a condition of community custody for the
14 offender. The department shall, with available resources, carry out
15 any monitoring imposed under this section using the most appropriate
16 technology given the individual circumstances of the offender. As used
17 in this section, "electronic monitoring" means the monitoring of an
18 offender using an electronic offender tracking system including, but
19 not limited to, a system using radio frequency or active or passive
20 global positioning technology. The board must consider and may impose
21 department-recommended conditions.

22 (2) The department may not recommend and the board may not impose
23 conditions that are contrary to those ordered by the court and may not
24 contravene or decrease court-imposed conditions. The board shall
25 notify the offender in writing of any such conditions or modifications.

26 (3) In setting, modifying, and enforcing conditions of community
27 custody, the department shall be deemed to be performing a quasi-
28 judicial function.

29 (4) If an offender violates conditions imposed by the court, the
30 department, or the board during community custody, the board or the

1 department may transfer the offender to a more restrictive confinement
2 status and impose other available sanctions as provided in RCW
3 9.95.435.

4 (5) By the close of the next business day, after receiving notice
5 of a condition imposed by the board or the department, an offender may
6 request an administrative hearing under rules adopted by the board.
7 The condition shall remain in effect unless the hearing examiner finds
8 that it is not reasonably related to any of the following:

- 9 (a) The crime of conviction;
- 10 (b) The offender's risk of reoffending; or
- 11 (c) The safety of the community.

12 (6) An offender released by the board under RCW 9.95.420 shall be
13 subject to the supervision of the department until the expiration of
14 the maximum term of the sentence. The department shall monitor the
15 offender's compliance with conditions of community custody imposed by
16 the court, department, or board, and promptly report any violations to
17 the board. Any violation of conditions of community custody
18 established or modified by the board shall be subject to the provisions
19 of RCW 9.95.425 through 9.95.440.

20 (7) If the department finds that an emergency exists requiring the
21 immediate imposition of conditions of release in addition to those set
22 by the board under RCW 9.95.420 and subsection (1) of this section in
23 order to prevent the offender from committing a crime, the department
24 may impose additional conditions. The department may not impose
25 conditions that are contrary to those set by the board or the court and
26 may not contravene or decrease court-imposed or board-imposed
27 conditions. Conditions imposed under this subsection shall take effect
28 immediately after notice to the offender by personal service, but shall
29 not remain in effect longer than seven working days unless approved by
30 the board under subsection (1) of this section within seven working
31 days.

32 **Sec. 2.** RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read
33 as follows:

34 (1) When a court sentences a person to the custody of the
35 department for a sex offense not sentenced under RCW 9.94A.712, a
36 violent offense, any crime against persons under RCW 9.94A.411(2), or
37 a felony offense under chapter 69.50 or 69.52 RCW, committed on or

1 after July 1, 2000, the court shall in addition to the other terms of
2 the sentence, sentence the offender to community custody for the
3 community custody range established under RCW 9.94A.850 or up to the
4 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
5 whichever is longer. The community custody shall begin: (a) Upon
6 completion of the term of confinement; (b) at such time as the offender
7 is transferred to community custody in lieu of earned release in
8 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
9 offenders sentenced under RCW 9.94A.660, upon failure to complete or
10 administrative termination from the special drug offender sentencing
11 alternative program. Except as provided in RCW 9.94A.501, the
12 department shall supervise any sentence of community custody imposed
13 under this section.

14 (2)(a) Unless a condition is waived by the court, the conditions of
15 community custody shall include those provided for in RCW 9.94A.700(4).
16 The conditions may also include those provided for in RCW 9.94A.700(5).
17 The court may also order the offender to participate in rehabilitative
18 programs or otherwise perform affirmative conduct reasonably related to
19 the circumstances of the offense, the offender's risk of reoffending,
20 or the safety of the community, and the department shall enforce such
21 conditions pursuant to subsection (6) of this section.

22 (b) As part of any sentence that includes a term of community
23 custody imposed under this subsection, the court shall also require the
24 offender to comply with any conditions imposed by the department under
25 RCW 9.94A.720. The department shall assess the offender's risk of
26 reoffense and may establish and modify additional conditions of the
27 offender's community custody based upon the risk to community safety.
28 In addition, the department may require the offender to participate in
29 rehabilitative programs, or otherwise perform affirmative conduct, and
30 to obey all laws. The department may impose electronic monitoring as
31 a condition of community custody for an offender sentenced to a term of
32 community custody under this section pursuant to a conviction for a sex
33 offense. The department shall, with available resources, carry out any
34 electronic monitoring imposed under this section using the most
35 appropriate technology given the individual circumstances of the
36 offender. As used in this section, "electronic monitoring" means the
37 monitoring of an offender using an electronic offender tracking system

1 including, but not limited to, a system using radio frequency or active
2 or passive global positioning system technology.

3 (c) The department may not impose conditions that are contrary to
4 those ordered by the court and may not contravene or decrease court
5 imposed conditions. The department shall notify the offender in
6 writing of any such conditions or modifications. In setting,
7 modifying, and enforcing conditions of community custody, the
8 department shall be deemed to be performing a quasi-judicial function.

9 (3) If an offender violates conditions imposed by the court or the
10 department pursuant to this section during community custody, the
11 department may transfer the offender to a more restrictive confinement
12 status and impose other available sanctions as provided in RCW
13 9.94A.737 and 9.94A.740.

14 (4) Except for terms of community custody under RCW 9.94A.670, the
15 department shall discharge the offender from community custody on a
16 date determined by the department, which the department may modify,
17 based on risk and performance of the offender, within the range or at
18 the end of the period of earned release, whichever is later.

19 (5) At any time prior to the completion or termination of a sex
20 offender's term of community custody, if the court finds that public
21 safety would be enhanced, the court may impose and enforce an order
22 extending any or all of the conditions imposed pursuant to this section
23 for a period up to the maximum allowable sentence for the crime as it
24 is classified in chapter 9A.20 RCW, regardless of the expiration of the
25 offender's term of community custody. If a violation of a condition
26 extended under this subsection occurs after the expiration of the
27 offender's term of community custody, it shall be deemed a violation of
28 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
29 contempt of court as provided for in RCW 7.21.040. If the court
30 extends a condition beyond the expiration of the term of community
31 custody, the department is not responsible for supervision of the
32 offender's compliance with the condition.

33 (6) Within the funds available for community custody, the
34 department shall determine conditions and duration of community custody
35 on the basis of risk to community safety, and shall supervise offenders
36 during community custody on the basis of risk to community safety and
37 conditions imposed by the court. The secretary shall adopt rules to
38 implement the provisions of this subsection.

1 (7) By the close of the next business day after receiving notice of
2 a condition imposed or modified by the department, an offender may
3 request an administrative review under rules adopted by the department.
4 The condition shall remain in effect unless the reviewing officer finds
5 that it is not reasonably related to any of the following: (a) The
6 crime of conviction; (b) the offender's risk of reoffending; or (c) the
7 safety of the community.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
9 to read as follows:

10 Local governments, their subdivisions and employees, the department
11 of corrections and its employees, and the Washington association of
12 sheriffs and police chiefs and its employees are immune from civil
13 liability for damages arising from incidents involving offenders who
14 are placed on electronic monitoring, unless it is shown that an
15 employee acted with gross negligence or bad faith."

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16 On page 1, line 1 of the title, after "offenders;" strike the
17 remainder of the title and insert "amending RCW 9.94A.713 and
18 9.94A.715; and adding a new section to chapter 4.24 RCW."

EFFECT: Authorizes the department to recommend and the board to
impose electronic monitoring as a condition of community custody for
determinate-plus sex offenders. Permits the department to impose
electronic monitoring as a condition of community custody only for
those serving a term of community custody pursuant to a conviction for
a sex offense. Clarifies that the department of corrections is
included in the civil immunity provision.

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