

SHB 2407 - S COMM AMD
By Committee on Ways & Means

ADOPTED 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, if recommended, the
13 board may impose electronic monitoring as a condition of community
14 custody for the offender. Within the resources made available by the
15 department for this purpose, the department shall carry out any
16 monitoring imposed under this section using the most appropriate
17 technology given the individual circumstances of the offender. As used
18 in this section, "electronic monitoring" means the monitoring of an
19 offender using an electronic offender tracking system including, but
20 not limited to, a system using radio frequency or active or passive
21 global positioning technology. The board must consider and may impose
22 department-recommended conditions.

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

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

1 (4) If an offender violates conditions imposed by the court, the
2 department, or the board during community custody, the board or the
3 department may transfer the offender to a more restrictive confinement
4 status and impose other available sanctions as provided in RCW
5 9.95.435.

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

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

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

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

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

36 (1) When a court sentences a person to the custody of the
37 department for a sex offense not sentenced under RCW 9.94A.712, a

1 violent offense, any crime against persons under RCW 9.94A.411(2), or
2 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
3 after July 1, 2000, the court shall in addition to the other terms of
4 the sentence, sentence the offender to community custody for the
5 community custody range established under RCW 9.94A.850 or up to the
6 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
7 whichever is longer. The community custody shall begin: (a) Upon
8 completion of the term of confinement; (b) at such time as the offender
9 is transferred to community custody in lieu of earned release in
10 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
11 offenders sentenced under RCW 9.94A.660, upon failure to complete or
12 administrative termination from the special drug offender sentencing
13 alternative program. Except as provided in RCW 9.94A.501, the
14 department shall supervise any sentence of community custody imposed
15 under this section.

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

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

1 "electronic monitoring" means the monitoring of an offender using an
2 electronic offender tracking system including, but not limited to, a
3 system using radio frequency or active or passive global positioning
4 system technology.

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

11 (3) If an offender violates conditions imposed by the court or the
12 department pursuant to this section during community custody, the
13 department may transfer the offender to a more restrictive confinement
14 status and impose other available sanctions as provided in RCW
15 9.94A.737 and 9.94A.740.

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

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

35 (6) Within the funds available for community custody, the
36 department shall determine conditions and duration of community custody
37 on the basis of risk to community safety, and shall supervise offenders

1 during community custody on the basis of risk to community safety and
2 conditions imposed by the court. The secretary shall adopt rules to
3 implement the provisions of this subsection.

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

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

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

SHB 2407 - S COMM AMD
By Committee on Ways & Means

ADOPTED 02/28/2006

19 On page 1, line 1 of the title, after "offenders;" strike the
20 remainder of the title and insert "amending RCW 9.94A.713 and
21 9.94A.715; and adding a new section to chapter 4.24 RCW."

--- END ---