
SUBSTITUTE HOUSE BILL 2407

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Lovick, Strow, O'Brien, Ericks, Dunshee, Linville, Grant, Lantz, Kessler, Williams, Blake, Morrell, Rodne, Hunt, Conway, P. Sullivan, Springer, Takko, Kilmer, Fromhold, B. Sullivan, Hunter, Simpson, Green, Miloscia, Sells, Upthegrove, Campbell and Ormsby)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to electronic monitoring of sex offenders; amending
2 RCW 9.94A.715; reenacting and amending RCW 9.94A.505; adding a new
3 section to chapter 9.94A RCW; adding a new section to chapter 4.24 RCW;
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1) A court shall impose electronic monitoring as a condition of
9 community custody for an offender sentenced under RCW 9.94A.712, or an
10 offender convicted of a violation of RCW 9A.44.130(10)(a), unless the
11 court finds electronic monitoring impracticable or inappropriate given
12 the individual circumstances of the offender.

13 (2) A court may impose electronic monitoring as a condition of
14 community custody for an offender convicted of any sex offense not
15 included in subsection (1) of this section.

16 (3) The department shall carry out any electronic monitoring
17 ordered under this section using the most appropriate technology given
18 the individual circumstances of the offender. The department may

1 require an offender to pay all or part of the costs for electronic
2 monitoring imposed under this section dependent upon the offender's
3 ability to pay.

4 (4) As used in this section, "electronic monitoring" means the
5 monitoring of an offender using an electronic offender tracking system
6 including, but not limited to, a system using radio frequency or active
7 or passive global positioning system technology.

8 **Sec. 2.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
9 2002 c 175 s 6 are each reenacted and amended to read as follows:

10 (1) When a person is convicted of a felony, the court shall impose
11 punishment as provided in this chapter.

12 (2)(a) The court shall impose a sentence as provided in the
13 following sections and as applicable in the case:

14 (i) Unless another term of confinement applies, the court shall
15 impose a sentence within the standard sentence range established in RCW
16 9.94A.510 or 9.94A.517;

17 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

18 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

19 (iv) RCW 9.94A.545, relating to community custody for offenders
20 whose term of confinement is one year or less;

21 (v) RCW 9.94A.570, relating to persistent offenders;

22 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

23 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

24 (viii) RCW 9.94A.660, relating to the drug offender sentencing
25 alternative;

26 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
27 alternative;

28 (x) RCW 9.94A.712, relating to certain sex offenses;

29 (xi) RCW 9.94A.535, relating to exceptional sentences;

30 (xii) RCW 9.94A.589, relating to consecutive and concurrent
31 sentences;

32 (xiii) Section 1 of this act, relating to electronic monitoring of
33 sex offenders.

34 (b) If a standard sentence range has not been established for the
35 offender's crime, the court shall impose a determinate sentence which
36 may include not more than one year of confinement; community
37 restitution work; until July 1, 2000, a term of community supervision

1 not to exceed one year and on and after July 1, 2000, a term of
2 community custody not to exceed one year, subject to conditions and
3 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
4 legal financial obligations. The court may impose a sentence which
5 provides more than one year of confinement if the court finds reasons
6 justifying an exceptional sentence as provided in RCW 9.94A.535.

7 (3) If the court imposes a sentence requiring confinement of thirty
8 days or less, the court may, in its discretion, specify that the
9 sentence be served on consecutive or intermittent days. A sentence
10 requiring more than thirty days of confinement shall be served on
11 consecutive days. Local jail administrators may schedule court-ordered
12 intermittent sentences as space permits.

13 (4) If a sentence imposed includes payment of a legal financial
14 obligation, it shall be imposed as provided in RCW 9.94A.750,
15 9.94A.753, 9.94A.760, and 43.43.7541.

16 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
17 court may not impose a sentence providing for a term of confinement or
18 community supervision, community placement, or community custody which
19 exceeds the statutory maximum for the crime as provided in chapter
20 9A.20 RCW.

21 (6) The sentencing court shall give the offender credit for all
22 confinement time served before the sentencing if that confinement was
23 solely in regard to the offense for which the offender is being
24 sentenced.

25 (7) The court shall order restitution as provided in RCW 9.94A.750
26 and 9.94A.753.

27 (8) As a part of any sentence, the court may impose and enforce
28 crime-related prohibitions and affirmative conditions as provided in
29 this chapter.

30 (9) The court may order an offender whose sentence includes
31 community placement or community supervision to undergo a mental status
32 evaluation and to participate in available outpatient mental health
33 treatment, if the court finds that reasonable grounds exist to believe
34 that the offender is a mentally ill person as defined in RCW 71.24.025,
35 and that this condition is likely to have influenced the offense. An
36 order requiring mental status evaluation or treatment must be based on
37 a presentence report and, if applicable, mental status evaluations that

1 have been filed with the court to determine the offender's competency
2 or eligibility for a defense of insanity. The court may order
3 additional evaluations at a later date if deemed appropriate.

4 (10) In any sentence of partial confinement, the court may require
5 the offender to serve the partial confinement in work release, in a
6 program of home detention, on work crew, or in a combined program of
7 work crew and home detention.

8 (11) In sentencing an offender convicted of a crime of domestic
9 violence, as defined in RCW 10.99.020, if the offender has a minor
10 child, or if the victim of the offense for which the offender was
11 convicted has a minor child, the court may, as part of any term of
12 community supervision, community placement, or community custody, order
13 the offender to participate in a domestic violence perpetrator program
14 approved under RCW 26.50.150.

15 **Sec. 3.** RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read
16 as follows:

17 (1) When a court sentences a person to the custody of the
18 department for a sex offense not sentenced under RCW 9.94A.712, a
19 violent offense, any crime against persons under RCW 9.94A.411(2), or
20 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
21 after July 1, 2000, the court shall in addition to the other terms of
22 the sentence, sentence the offender to community custody for the
23 community custody range established under RCW 9.94A.850 or up to the
24 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
25 whichever is longer. The community custody shall begin: (a) Upon
26 completion of the term of confinement; (b) at such time as the offender
27 is transferred to community custody in lieu of earned release in
28 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
29 offenders sentenced under RCW 9.94A.660, upon failure to complete or
30 administrative termination from the special drug offender sentencing
31 alternative program. Except as provided in RCW 9.94A.501, the
32 department shall supervise any sentence of community custody imposed
33 under this section.

34 (2)(a) Unless a condition is waived by the court, the conditions of
35 community custody shall include those provided for in RCW 9.94A.700(4).
36 The conditions may also include those provided for in RCW 9.94A.700(5).
37 The court may also order the offender to participate in rehabilitative

1 programs or otherwise perform affirmative conduct reasonably related to
2 the circumstances of the offense, the offender's risk of reoffending,
3 or the safety of the community, and the department shall enforce such
4 conditions pursuant to subsection (6) of this section.

5 (b) As part of any sentence that includes a term of community
6 custody imposed under this subsection, the court shall also require the
7 offender to comply with any conditions imposed by the department under
8 RCW 9.94A.720. The department shall assess the offender's risk of
9 reoffense and may establish and modify additional conditions of the
10 offender's community custody based upon the risk to community safety.
11 In addition, the department may require the offender to participate in
12 rehabilitative programs, or otherwise perform affirmative conduct,
13 ~~((and))~~ to obey all laws, or to submit to electronic monitoring as
14 defined in section 1 of this act. The department shall notify local
15 law enforcement whenever electronic monitoring is imposed under this
16 subsection or section 1 of this act. The department shall carry out
17 any electronic monitoring imposed under section 1 of this act using the
18 most appropriate technology given the individual circumstances of the
19 offender.

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

26 (3) If an offender violates conditions imposed by the court or the
27 department pursuant to this section during community custody, the
28 department may transfer the offender to a more restrictive confinement
29 status and impose other available sanctions as provided in RCW
30 9.94A.737 and 9.94A.740.

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

36 (5) At any time prior to the completion or termination of a sex
37 offender's term of community custody, if the court finds that public
38 safety would be enhanced, the court may impose and enforce an order

1 extending any or all of the conditions imposed pursuant to this section
2 for a period up to the maximum allowable sentence for the crime as it
3 is classified in chapter 9A.20 RCW, regardless of the expiration of the
4 offender's term of community custody. If a violation of a condition
5 extended under this subsection occurs after the expiration of the
6 offender's term of community custody, it shall be deemed a violation of
7 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
8 contempt of court as provided for in RCW 7.21.040. If the court
9 extends a condition beyond the expiration of the term of community
10 custody, the department is not responsible for supervision of the
11 offender's compliance with the condition.

12 (6) Within the funds available for community custody, the
13 department shall determine conditions and duration of community custody
14 on the basis of risk to community safety, and shall supervise offenders
15 during community custody on the basis of risk to community safety and
16 conditions imposed by the court. The secretary shall adopt rules to
17 implement the provisions of this subsection.

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

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.24 RCW
26 to read as follows:

27 The department, monitoring agency, local law enforcement, and any
28 employee of the department, monitoring agency, or law enforcement
29 acting within the scope of his or her employment are immune from civil
30 liability resulting from acts or omissions relating to electronic
31 monitoring of offenders under this act, unless the department or
32 employee acted with gross negligence or in bad faith.

--- END ---