

2SSB 5070 - S AMD TO S AMD (S-2731.1/07) **176**
By Senators Hargrove, Carrell, Regala

ADOPTED 03/10/2007

1 On page 27, after line 5 of the amendment, insert the following:

2 "Sec. 405. RCW 9.94A.737 and 2005 c 435 s 3 are each amended to
3 read as follows:

4 (1) If an offender violates any condition or requirement of
5 community custody, the department may transfer the offender to a more
6 restrictive confinement status to serve up to the remaining portion of
7 the sentence, less credit for any period actually spent in community
8 custody or in detention awaiting disposition of an alleged violation
9 and subject to the limitations of subsection (~~((2))~~) (3) of this
10 section.

11 (2) If an offender has not completed his or her maximum term of
12 total confinement and commits a third violation of any condition of
13 community custody, the department shall return the offender to total
14 confinement in a state correctional facility to serve up to the
15 remaining portion of his or her sentence, unless it is determined that
16 returning the offender to a state correctional facility would
17 substantially interfere with the offender's ability to maintain
18 necessary community supports or to participate in necessary treatment
19 or programming and would substantially increase the offender's
20 likelihood of reoffending. At the completion of any term of total
21 confinement under this subsection, an offender shall be subject to not
22 less than twelve months of community custody if the offender was
23 originally sentenced on or after the effective date of this section.

24 (3)(a) For a sex offender sentenced to a term of community custody
25 under RCW 9.94A.670 who violates any condition of community custody,
26 the department may impose a sanction of up to sixty days' confinement
27 in a local correctional facility for each violation. If the department
28 imposes a sanction, the department shall submit within seventy-two
29 hours a report to the court and the prosecuting attorney outlining the
30 violation or violations and the sanctions imposed.

1 (b) For a sex offender sentenced to a term of community custody
2 under RCW 9.94A.710 who violates any condition of community custody
3 after having completed his or her maximum term of total confinement,
4 including time served on community custody in lieu of earned release,
5 the department may impose a sanction of up to sixty days in a local
6 correctional facility for each violation.

7 (c) For an offender sentenced to a term of community custody under
8 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
9 for a crime committed on or after July 1, 2000, who violates any
10 condition of community custody after having completed his or her
11 maximum term of total confinement, including time served on community
12 custody in lieu of earned release, the department may impose a sanction
13 of up to sixty days in total confinement for each violation. The
14 department may impose sanctions such as work release, home detention
15 with electronic monitoring, work crew, community restitution, inpatient
16 treatment, daily reporting, curfew, educational or counseling sessions,
17 supervision enhanced through electronic monitoring, or any other
18 sanctions available in the community.

19 (d) For an offender sentenced to a term of community placement
20 under RCW 9.94A.705 who violates any condition of community placement
21 after having completed his or her maximum term of total confinement,
22 including time served on community custody in lieu of earned release,
23 the department may impose a sanction of up to sixty days in total
24 confinement for each violation. The department may impose sanctions
25 such as work release, home detention with electronic monitoring, work
26 crew, community restitution, inpatient treatment, daily reporting,
27 curfew, educational or counseling sessions, supervision enhanced
28 through electronic monitoring, or any other sanctions available in the
29 community.

30 ~~((+3))~~ (4) If an offender has been arrested for a new felony
31 offense, the department shall hold the offender in total confinement
32 until a hearing before the department as provided in this section or
33 until the offender has been formally charged for the new felony
34 offense, whichever is earlier. Nothing in this subsection shall be
35 construed as to permit the department to hold an offender past his or
36 her maximum term of total confinement if the offender has not completed
37 the maximum term of total confinement or to permit the department to
38 hold an offender past the offender's term of community custody.

1 (5) Any offender sanctioned to total confinement under this section
2 shall serve the entire term of the sanction in total confinement as
3 defined in RCW 9.94A.030.

4 (6) The department shall be financially responsible for any portion
5 of the sanctions authorized by this section that are served in a local
6 correctional facility.

7 (7) If an offender is accused of violating any condition or
8 requirement of community custody, he or she is entitled to a hearing
9 before the department prior to the imposition of sanctions. The
10 hearing shall be considered as offender disciplinary proceedings and
11 shall not be subject to chapter 34.05 RCW. The department shall
12 develop hearing procedures and a structure of graduated sanctions.

13 (~~(4)~~) (8) The hearing procedures required under subsection
14 (~~(3)~~) (7) of this section shall be developed by rule and include the
15 following:

16 (a) Hearing officers shall report through a chain of command
17 separate from that of community corrections officers;

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

24 (c) The hearing shall be held unless waived by the offender, and
25 shall be electronically recorded. For offenders not in total
26 confinement, the hearing shall be held within fifteen working days, but
27 not less than twenty-four hours, after notice of the violation. For
28 offenders in total confinement, the hearing shall be held within five
29 working days, but not less than twenty-four hours, after notice of the
30 violation;

31 (d) The offender shall have the right to: (i) Be present at the
32 hearing; (ii) have the assistance of a person qualified to assist the
33 offender in the hearing, appointed by the hearing officer if the
34 offender has a language or communications barrier; (iii) testify or
35 remain silent; (iv) call witnesses and present documentary evidence;
36 and (v) question witnesses who appear and testify; and

37 (e) The sanction shall take effect if affirmed by the hearing
38 officer. Within seven days after the hearing officer's decision, the

1 offender may appeal the decision to a panel of three reviewing officers
2 designated by the secretary or by the secretary's designee. The
3 sanction shall be reversed or modified if a majority of the panel finds
4 that the sanction was not reasonably related to any of the following:
5 (i) The crime of conviction; (ii) the violation committed; (iii) the
6 offender's risk of reoffending; or (iv) the safety of the community.

7 ~~((+5))~~ (9) For purposes of this section, no finding of a violation
8 of conditions may be based on unconfirmed or unconfirmable allegations.

9 ~~((+6))~~ (10) The department shall work with the Washington
10 association of sheriffs and police chiefs to establish and operate an
11 electronic monitoring program for low-risk offenders who violate the
12 terms of their community custody. Between January 1, 2006, and
13 December 31, 2006, the department shall endeavor to place at least one
14 hundred low-risk community custody violators on the electronic
15 monitoring program per day if there are at least that many low-risk
16 offenders who qualify for the electronic monitoring program.

17 ~~((+7))~~ (11) Local governments, their subdivisions and employees,
18 the department and its employees, and the Washington association of
19 sheriffs and police chiefs and its employees shall be immune from civil
20 liability for damages arising from incidents involving low-risk
21 offenders who are placed on electronic monitoring unless it is shown
22 that an employee acted with gross negligence or bad faith."

23 Renumber the remaining sections consecutively and correct any
24 internal references accordingly.

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25 On page 62, line 7 of the amendment, after "9.94A.728," insert
26 "9.94A.737,"

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