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HOUSE BILL 2084

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State of Washington

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By Representatives Pearson, Kristiansen, Curtis, Ross, Ahern, Rodne, McCune, Schindler, Warnick, Newhouse, Orcutt, O'Brien, Hailey, Roach and Bailey

Read first time 02/07/2007. Referred to Committee on Human Services.

1 AN ACT Relating to improving state supervision of felony offenders  
2 in the community; amending RCW 9.94A.737 and 9.94A.631; adding new  
3 sections to chapter 72.09 RCW; creating a new section; and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 9.94A.737 and 2005 c 435 s 3 are each amended to read  
7 as follows:

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

14 (2)(a) For a sex offender sentenced to a term of community custody  
15 under RCW 9.94A.670 who violates any condition of community custody,  
16 the department may impose a sanction of ~~((up to sixty days<sup>1</sup>))~~ total  
17 confinement ((in a local correctional facility)) for a period of time  
18 up to the offender's remaining term of community custody for each  
19 violation. If the department imposes a sanction, the department shall

1 submit within seventy-two hours a report to the court and the  
2 prosecuting attorney outlining the violation or violations and the  
3 sanctions imposed.

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

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

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

36 (3) If an offender is accused of violating any condition or  
37 requirement of community custody, he or she is entitled to a hearing  
38 before the department prior to the imposition of sanctions. The

1 hearing shall be considered as offender disciplinary proceedings and  
2 shall not be subject to chapter 34.05 RCW. The department shall  
3 develop hearing procedures and a structure of graduated sanctions.

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

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

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

14 (c) The hearing shall be held unless waived by the offender, and  
15 shall be electronically recorded. For offenders not in total  
16 confinement, the hearing shall be held within fifteen working days, but  
17 not less than twenty-four hours, after notice of the violation. For  
18 offenders in total confinement, the hearing shall be held within five  
19 working days, but not less than twenty-four hours, after notice of the  
20 violation;

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

27 (e) The sanction shall take effect if affirmed by the hearing  
28 officer. Within seven days after the hearing officer's decision, the  
29 offender may appeal the decision to a panel of three reviewing officers  
30 designated by the secretary or by the secretary's designee. The  
31 sanction shall be reversed or modified if a majority of the panel finds  
32 that the sanction was not reasonably related to any of the following:  
33 (i) The crime of conviction; (ii) the violation committed; (iii) the  
34 offender's risk of reoffending; or (iv) the safety of the community.

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

37 (6) The department shall work with the Washington association of  
38 sheriffs and police chiefs to establish and operate an electronic

1 monitoring program for low-risk offenders who violate the terms of  
2 their community custody. Between January 1, 2006, and December 31,  
3 2006, the department shall endeavor to place at least one hundred low-  
4 risk community custody violators on the electronic monitoring program  
5 per day if there are at least that many low-risk offenders who qualify  
6 for the electronic monitoring program.

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

13 **Sec. 2.** RCW 9.94A.631 and 1984 c 209 s 11 are each amended to read  
14 as follows:

15 If an offender violates any condition or requirement of a sentence,  
16 a community corrections officer may arrest or cause the arrest of the  
17 offender without a warrant, pending a determination by the court. (~~If~~  
18 ~~there is reasonable cause to believe that an offender has violated a~~  
19 ~~condition or requirement of the sentence,~~) An offender may be required  
20 to submit to a search and seizure of the offender's person, residence,  
21 automobile, or other personal property. A community corrections  
22 officer may also arrest an offender for any crime committed in his or  
23 her presence. The facts and circumstances of the conduct of the  
24 offender shall be reported by the community corrections officer, with  
25 recommendations, to the court.

26 If a community corrections officer arrests or causes the arrest of  
27 an offender under this section, the offender shall be confined and  
28 detained in the county jail of the county in which the offender was  
29 taken into custody, and the sheriff of that county shall receive and  
30 keep in the county jail, where room is available, all prisoners  
31 delivered to the jail by the community corrections officer, and such  
32 offenders shall not be released from custody on bail or personal  
33 recognizance, except upon approval of the court, pursuant to a written  
34 order.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 72.09 RCW  
36 to read as follows:

1 The department shall perform random, unannounced inspections of the  
2 residence of every offender serving a term of community custody. The  
3 purpose and scope of the search shall be to determine whether the  
4 offender is complying with the terms of his or her community custody.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 72.09 RCW  
6 to read as follows:

7 The department shall develop a performance review whenever an  
8 offender serving a term of community custody is convicted of a new  
9 crime to determine whether the department contributed to the  
10 circumstances that allowed the crime to occur. Beginning January 1,  
11 2008, the department shall compile and submit copies of the reviews  
12 developed during the previous calendar year to the governor and the  
13 legislature.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 72.09 RCW  
15 to read as follows:

16 (1) Beginning January 1, 2008, the department shall submit an  
17 annual report to the governor and the legislature containing:

18 (a) The number of offenders supervised by the department during the  
19 previous calendar year;

20 (b) The number and custody levels of offenders who violated one or  
21 more conditions of their community custody during the previous calendar  
22 year; and

23 (c) The number and custody levels of offenders who were convicted,  
24 during the previous calendar year, of new offenses that were committed  
25 while the offenders were on community custody.

26 (2) The department shall perform a study to determine whether it  
27 has the capacity to adequately supervise all offenders who are serving  
28 a term of community custody. The department shall report the results  
29 of this study along with a plan to efficiently and effectively improve  
30 its supervision capacity to the governor and the legislature by January  
31 1, 2008. For purposes of this subsection, "adequately supervise" means  
32 to supervise in a manner that minimizes the number of community custody  
33 violations and new crimes committed by offenders under supervision.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.09 RCW  
35 to read as follows:

1           (1) The department may not release any offenders on community  
2 custody until July 1, 2008. The prohibition in this subsection applies  
3 regardless of whether the community custody is the result of earned  
4 release time or is part of the offender's sentence.

5           (2) In no case shall the department hold an offender in total  
6 confinement under this section longer than his or her total term of  
7 confinement plus any term of community custody that is part of his or  
8 her sentence.

9           NEW SECTION.   **Sec. 7.** Sections 1 through 3 of this act apply to  
10 any offender under the supervision of the department of corrections on  
11 or after the effective date of this act.

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