

SHB 1792 - H AMD 95

By Representative Pearson

WITHDRAWN 03/05/2009

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

3 "Sec. 1. RCW 9.94A.631 and 1984 c 209 s 11 are each amended to
4 read as follows:

5 (1) If an offender violates any condition or requirement of a
6 sentence, a community corrections officer may arrest or cause the
7 arrest of the offender without a warrant, pending a determination by
8 the court or a department of corrections hearing officer. If there is
9 reasonable cause to believe that an offender has violated a condition
10 or requirement of the sentence, a community corrections officer may
11 require an offender ((may be required)) to submit to a search and
12 seizure of the offender's person, residence, automobile, or other
13 personal property.

14 (2)(a) Because it is reasonable that the safety of department staff
15 and offenders themselves require offenders serving their sentences in
16 total confinement be subject to random, unannounced inspections without
17 violating the Washington state and United States Constitutions, it is
18 reasonable that offenders serving their sentences on community custody
19 have the same expectation of privacy as do offenders in total
20 confinement, and that the safety of the public and department staff
21 require offenders serving their sentences on community custody be
22 subject to random, unannounced inspections without violating the
23 Washington state and United States Constitutions.

24 (b) An offender may be required to submit to a random, unannounced
25 inspection of the offender's person, residence, automobile, or other
26 personal property, without reasonable cause to believe that he or she
27 has violated a condition or requirement of his or her sentence.

28 (c) For the safety and security of department staff, an offender
29 may be required to submit to pat searches, or other limited security
30 searches, by community corrections officers, correctional officers, and

1 other agency approved staff, without reasonable cause, when in or on
2 department premises, grounds, facilities, or vehicles, or while
3 preparing to enter department premises, grounds, facilities, or
4 vehicles. Pat searches of offenders shall be conducted only by staff
5 who are the same gender as the offender, except in emergency
6 situations.

7 (d) For the safety and security of the public and department staff,
8 a community corrections officer may perform a random, unannounced
9 inspection of an offender's person, residence, automobile, or other
10 personal property of the offender, without reasonable cause to believe
11 that he or she has violated a condition or requirement of his or her
12 sentence.

13 (3) A community corrections officer may also arrest an offender
14 for any crime committed in his or her presence. The facts and
15 circumstances of the conduct of the offender shall be reported by the
16 community corrections officer, with recommendations, to the court or
17 department of corrections hearing officer.

18 If a community corrections officer arrests or causes the arrest of
19 an offender under this section, the offender shall be confined and
20 detained in the county jail of the county in which the offender was
21 taken into custody, and the sheriff of that county shall receive and
22 keep in the county jail, where room is available, all prisoners
23 delivered to the jail by the community corrections officer, and such
24 offenders shall not be released from custody on bail or personal
25 recognizance, except upon approval of the court or authorized
26 department staff, pursuant to a written order."

EFFECT: (1) Shifts from passive to active the requirement that an offender submit to search and seizure of his or her person, residence, automobile, or other personal property if there is reasonable cause to believe that an offender has violated a condition or requirement of his or her sentence. The Substitute Bill provided that an offender "may be required" to submit to a search and seizure. The amendment states that the Community Corrections Officer (CCO) "may require" the offender to submit to a search and seizure.

(2) Provides that it is a reasonable requirement for the safety of Department of Corrections (DOC) staff and offenders themselves that offenders serving sentences in total confinement can be subject to

random, unannounced inspections without violating the United States Constitution or the Washington state Constitution. Further, it provides that it is reasonable that offenders on community custody have the same expectation of privacy as an offender in total confinement and that the safety of the public and the DOC staff requires that these offenders are subject to random, unannounced inspections.

(3) Permits an offender to be required to submit to a random, unannounced inspection of his or her person, residence, automobile, or other personal property without reasonable cause to believe that he or she has violated a condition or requirement of his or her sentence.

(4) Expands the scope of locations and circumstances under which the Department of Corrections (DOC) staff may conduct pat down searches without reasonable cause to believe that an offender has violated a condition or requirement of his or her sentence. In addition to allowing a pat search when in or on DOC premises or entering or preparing to enter a DOC vehicle, an offender may be searched while preparing to enter DOC premises, grounds, or facilities.

(5) Requires that pat searches of all offenders shall be conducted only by staff of the same gender as the offender, except in emergency situations.

(6) Permits a CCO, for the safety and security of the public and DOC staff, to perform a random, unannounced inspection of an offender's person, residence, automobile, or other personal property without reasonable cause to believe that he or she has violated a condition or requirement of his or her sentence.

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