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HOUSE BILL 1839

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State of Washington

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2009 Regular Session

**By** Representatives Pearson, Dammeier, Priest, Hinkle, Kristiansen, Smith, McCune, Ross, Walsh, Schmick, Cox, Haler, Klippert, Orcutt, Bailey, Rodne, Newhouse, Chandler, Roach, Warnick, Angel, Hope, and Johnson

Read first time 01/30/09. Referred to Committee on Human Services.

1 AN ACT Relating to improving the resources and tools community  
2 corrections officers and law enforcement need to perform their duties  
3 protecting the public; amending RCW 9.94A.631, and 9.94A.737; adding  
4 new sections to chapter 9.94A RCW; adding new sections to chapter 72.09  
5 RCW; adding a new section to chapter 72.04A RCW; creating new sections;  
6 and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that public safety is  
9 one of the paramount duties of the state and an essential function of  
10 government. The legislature further finds that systemic problems exist  
11 with the department of corrections that must be addressed expeditiously  
12 and unequivocally in order to rebuild public confidence in the state's  
13 ability to best protect them from criminal offenders who have been  
14 released from full incarceration but are still serving their sentences  
15 on community custody. Turnstile justice is not conducive to building  
16 public safety, public confidence in and support for our criminal  
17 justice system as a whole, and the morale of personnel working within  
18 our department of corrections, law enforcement agencies, and  
19 prosecutors' offices. Citizens expect and demand predictability,

1 proportionality, uniformity, transparency, and justice when dealing  
2 with criminal offenders and due consideration for the severe and  
3 detrimental impact of crime on victims and their families and friends  
4 when dealing with such offenders. The legislature also recognizes the  
5 need to ensure the safety of the public while offenders are released  
6 into communities. To further the goal of ensuring public safety, the  
7 legislature intends to improve the monitoring of offenders on  
8 supervision and hold those who violate the conditions of supervision  
9 accountable for their actions. The legislature intends to increase the  
10 effectiveness of supervision of offenders on community custody through  
11 methods such as providing community corrections officers increased  
12 flexibility in determining sanctions for supervision violations and in  
13 searches of offenders on community custody with the goal of enhancing  
14 public safety and preventing future offenses and supervision  
15 violations.

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

18 If an offender violates any condition or requirement of a sentence,  
19 a community corrections officer may arrest or cause the arrest of the  
20 offender without a warrant, pending a determination by the court. If  
21 there is reasonable cause to believe that an offender has violated a  
22 condition or requirement of the sentence, an offender may be required  
23 to submit to a search and seizure of the offender's person, residence,  
24 automobile, or other personal property. An offender may be required to  
25 submit to a search without reasonable cause to believe that he or she  
26 has violated a condition or requirement of the sentence if the search  
27 is a condition of his or her community custody under section 3 of this  
28 act. A community corrections officer may also arrest an offender for  
29 any crime committed in his or her presence. The facts and  
30 circumstances of the conduct of the offender shall be reported by the  
31 community corrections officer, with recommendations, to the court.

32 If a community corrections officer arrests or causes the arrest of  
33 an offender under this section, the offender shall be confined and  
34 detained in the county jail of the county in which the offender was  
35 taken into custody, and the sheriff of that county shall receive and  
36 keep in the county jail, where room is available, all prisoners  
37 delivered to the jail by the community corrections officer, and such

1 offenders shall not be released from custody on bail or personal  
2 recognizance, except upon approval of the court, pursuant to a written  
3 order.

4 NEW SECTION. **Sec. 3.** (1) The legislature finds that:

5 (a) Offenders in total confinement may be subjected to random,  
6 unannounced inspections without violating the constitutional  
7 requirement that all searches be reasonable;

8 (b) Offenders on community custody, including escapees and  
9 absconders, have the same expectation of privacy as offenders in total  
10 confinement; and

11 (c) Requiring an offender on community custody, including escapees  
12 and absconders, to submit to random, unannounced inspections is  
13 therefore reasonable under the federal and state Constitutions.

14 (2) When a court sentences an offender to a term of community  
15 custody under RCW 9.94A.505(2)(b), 9.94A.545, 9.94A.650, or 9.94A.715,  
16 for a crime committed on or after the effective date of this act, the  
17 court shall require the offender, as a condition of community custody,  
18 to submit to random, unannounced inspections of his or her person,  
19 residence, automobile, or other personal property.

20 NEW SECTION. **Sec. 4.** The department shall allow community  
21 corrections officers to inspect the person, residence, automobile, or  
22 other personal property of an offender, including escapees and  
23 absconders, under its supervision in the community whenever the  
24 community corrections officer, based on the officer's professional  
25 judgment and discretion, has reasonable cause to believe that the  
26 offender has violated a condition or requirement of his or her  
27 sentence.

28 NEW SECTION. **Sec. 5.** (1) The department shall allow community  
29 corrections officers, based on the officer's professional judgment and  
30 discretion, to perform random, unannounced inspections of the person,  
31 residence, automobile, or other personal property of every offender,  
32 including escapees and absconders, under the department's supervision  
33 pursuant to a term of community custody imposed for a crime committed  
34 on or after the effective date of this act.

1 (2) The community corrections officer shall document his or her  
2 rationale for conducting an inspection under this section.

3 NEW SECTION. **Sec. 6.** (1) A community corrections officer is not  
4 liable for civil damages arising from an act or omission that occurs  
5 when the community corrections officer provides assistance to a law  
6 enforcement officer so long as the community corrections officer was  
7 acting at the request of the law enforcement officer, unless the act or  
8 omission constitutes gross negligence.

9 (2) A community corrections officer is not liable for civil damages  
10 arising from an act or omission that occurs when the community  
11 corrections officer interacts with a third party who is attempting to  
12 intervene in a situation in which the community corrections officer is  
13 contacting an offender on community custody or community supervision,  
14 unless the act or omission constitutes gross negligence.

15 **Sec. 7.** RCW 9.94A.737 and 2008 c 231 s 20 are each amended to read  
16 as follows:

17 (1) If an offender is accused of violating any condition or  
18 requirement of community custody, he or she is entitled to a hearing  
19 before the department prior to the imposition of sanctions. The  
20 hearing shall be considered as offender disciplinary proceedings and  
21 shall not be subject to chapter 34.05 RCW. The department shall  
22 develop hearing procedures and a structure of graduated sanctions.

23 (2) The hearing procedures required under subsection (1) of this  
24 section shall be developed by rule and include the following:

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

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

33 (c) The hearing shall be held unless waived by the offender, and  
34 shall be electronically recorded. For offenders not in total  
35 confinement, the hearing shall be held within fifteen working days, but  
36 not less than twenty-four hours, after notice of the violation. For

1 offenders in total confinement, the hearing shall be held within five  
2 working days, but not less than twenty-four hours, after notice of the  
3 violation;

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

10 (e) The sanction shall take effect if affirmed by the hearing  
11 officer. Within seven days after the hearing officer's decision, the  
12 offender may appeal the decision to a panel of three reviewing officers  
13 designated by the secretary or by the secretary's designee. The  
14 sanction shall be reversed or modified if a majority of the panel finds  
15 that the sanction was not reasonably related to any of the following:  
16 (i) The crime of conviction; (ii) the violation committed; (iii) the  
17 offender's risk of reoffending; or (iv) the safety of the community.

18 (3) When determining the sanction to be imposed on an offender who  
19 violates any condition of community custody, a hearing officer shall  
20 give due consideration to the community corrections officer's  
21 recommendation and shall have the option, based on the hearing  
22 officer's professional determination and discretion, to impose the  
23 maximum sanction or sanctions allowed under law or the maximum response  
24 option adopted by the department regardless of the response option  
25 range or violation response score.

26 (4) For purposes of this section, no finding of a violation of  
27 conditions may be based on unconfirmed or unconfirmable allegations.

28 NEW SECTION. Sec. 8. If specific funding for the purposes of this  
29 act, referencing this act by bill or chapter number, is not provided by  
30 June 30, 2009, in the omnibus appropriations act, this act is null and  
31 void.

32 NEW SECTION. Sec. 9. A new section is added to chapter 72.04A RCW  
33 to read as follows:

34 The department shall develop a plan, using the existing staffing  
35 matrix, to reduce the supervision caseload of community corrections  
36 officers by December 1, 2010, and increase partnerships such as the

1 neighborhood corrections initiative. Prior to 2010, the department  
2 shall hire additional community corrections officers to the extent  
3 funding is provided in the operating budget.

4 NEW SECTION. **Sec. 10.** Sections 3 and 6 of this act are each added  
5 to chapter 9.94A RCW.

6 NEW SECTION. **Sec. 11.** Sections 4 and 5 of this act are each added  
7 to chapter 72.09 RCW.

8 NEW SECTION. **Sec. 12.** This act takes effect August 1, 2009.

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