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HOUSE BILL 1209

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Pearson, Ross, Armstrong, Klippert, Schmick, Warnick, Johnson, Haler, Smith, and Kristiansen

Read first time 01/17/11. Referred to Committee on Public Safety & Emergency Preparedness.

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 new  
4 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 2009 c 390 s 1 are each amended to read  
17 as follows:

18 (1) If an offender violates any condition or requirement of a  
19 sentence, a community corrections officer may arrest or cause the  
20 arrest of the offender without a warrant, pending a determination by  
21 the court or a department of corrections hearing officer. If there is  
22 reasonable cause to believe that an offender has violated a condition  
23 or requirement of the sentence, a community corrections officer may  
24 require an offender to submit to a search and seizure of the offender's  
25 person, residence, automobile, or other personal property.

26 (2) For the safety and security of department staff, an offender  
27 may be required to submit to a search, including a pat search~~((es\_))~~ or  
28 other limited security search~~((es))~~, by community corrections officers,  
29 correctional officers, and other agency approved staff, without  
30 reasonable cause, when (a) in or on department premises, grounds, or  
31 facilities, or while preparing to enter department premises, grounds,  
32 facilities, or vehicles; or (b) the offender has violated a condition  
33 or requirement of the sentence if the search is a condition of his or  
34 her community custody under section 3 of this act. Pat searches of  
35 offenders shall be conducted only by staff who are the same gender as  
36 the offender, except in emergency situations.

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

6 If a community corrections officer arrests or causes the arrest of  
7 an offender under this section, the offender shall be confined and  
8 detained in the county jail of the county in which the offender was  
9 taken into custody, and the sheriff of that county shall receive and  
10 keep in the county jail, where room is available, all prisoners  
11 delivered to the jail by the community corrections officer, and such  
12 offenders shall not be released from custody on bail or personal  
13 recognizance, except upon approval of the court or authorized  
14 department staff, pursuant to a written order.

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

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

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

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

25 (2) When a court sentences an offender to a term of community  
26 custody under RCW 9.94A.505(2)(b) or 9.94A.650, for a crime committed  
27 on or after the effective date of this section, the court shall require  
28 the offender, as a condition of community custody, to submit to random,  
29 unannounced inspections of his or her person, residence, automobile, or  
30 other personal property.

31 NEW SECTION. **Sec. 4.** The department shall allow community  
32 corrections officers to inspect the person, residence, automobile, or  
33 other personal property of an offender, including escapees and  
34 absconders, under its supervision in the community whenever the  
35 community corrections officer, based on the officer's professional

1 judgment and discretion, has reasonable cause to believe that the  
2 offender has violated a condition or requirement of his or her  
3 sentence.

4 NEW SECTION. **Sec. 5.** (1) The department shall allow community  
5 corrections officers, based on the officer's professional judgment and  
6 discretion, to perform random, unannounced inspections of the person,  
7 residence, automobile, or other personal property of every offender,  
8 including escapees and absconders, under the department's supervision  
9 pursuant to a term of community custody imposed for a crime committed  
10 on or after the effective date of this section.

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

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

19 (2) A community corrections officer is not liable for civil damages  
20 arising from an act or omission that occurs when the community  
21 corrections officer interacts with a third party who is attempting to  
22 intervene in a situation in which the community corrections officer is  
23 contacting an offender on community custody or community supervision,  
24 unless the act or omission constitutes gross negligence.

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

27 (1) If an offender is accused of violating any condition or  
28 requirement of community custody, he or she is entitled to a hearing  
29 before the department prior to the imposition of sanctions. The  
30 hearing shall be considered as offender disciplinary proceedings and  
31 shall not be subject to chapter 34.05 RCW. The department shall  
32 develop hearing procedures and a structure of graduated sanctions.

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

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

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

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

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

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

30 (3) When determining the sanction to be imposed on an offender who  
31 violates any condition of community custody, a hearing officer shall  
32 give due consideration to the community corrections officer's  
33 recommendation and shall have the option, based on the hearing  
34 officer's professional determination and discretion, to impose the  
35 maximum sanction or sanctions allowed under law or the maximum response  
36 option adopted by the department regardless of the response option  
37 range or violation response score.

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

3       NEW SECTION. **Sec. 8.** If specific funding for the purposes of this  
4 act, referencing this act by bill or chapter number, is not provided by  
5 June 30, 2011, in the omnibus appropriations act, this act is null and  
6 void.

7       NEW SECTION. **Sec. 9.** A new section is added to chapter 72.04A RCW  
8 to read as follows:

9       The department shall develop a plan, using the existing staffing  
10 matrix, to reduce the supervision caseload of community corrections  
11 officers by December 1, 2012, and increase partnerships such as the  
12 neighborhood corrections initiative. Prior to 2012, the department  
13 shall hire additional community corrections officers to the extent  
14 funding is provided in the operating budget.

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

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

19       NEW SECTION. **Sec. 12.** This act takes effect August 1, 2011.

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