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**SENATE BILL 6369**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Nguyen, Darneille, Stanford, Das, and Wilson, C.

Read first time 01/15/20. Referred to Committee on Human Services,  
Reentry & Rehabilitation.

1 AN ACT Relating to individuals serving community custody terms;  
2 amending RCW 9.94A.737, 9.94A.631, and 9.94A.716; and creating a new  
3 section.

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

5 **Sec. 1.** RCW 9.94A.737 and 2012 1st sp.s. c 6 s 7 are each  
6 amended to read as follows:

7 (1) If an offender is accused of violating any condition or  
8 requirement of community custody, the department shall address the  
9 violation behavior. The department may hold offender disciplinary  
10 proceedings not subject to chapter 34.05 RCW. The department shall  
11 notify the offender in writing of the violation process.

12 (2)(a) The offender's violation behavior shall determine the  
13 sanction the department imposes. The department shall adopt rules  
14 creating a structured violation process that includes presumptive  
15 sanctions, aggravating and mitigating factors, and definitions for  
16 low level violations and high level violations.

17 ~~(b) ((After an offender has committed and been sanctioned for~~  
18 ~~five low level violations, all subsequent violations committed by~~  
19 ~~that offender shall automatically be considered high level~~  
20 ~~violations.~~

1 ~~(e))~~ (i) The department must define aggravating factors that  
2 indicate the offender may present a current and ongoing foreseeable  
3 risk and which therefore ~~(r))~~ elevate an offender's behavior to a  
4 high level violation process.

5 (ii) The state and its officers, agents, and employees may not be  
6 held criminally or civilly liable for a decision to elevate or not to  
7 elevate an offender's behavior to a high level violation process  
8 under this subsection unless the state or its officers, agents, and  
9 employees acted with reckless disregard.

10 (3) The department may intervene when an offender commits a low  
11 level violation ~~((as follows:~~

12 ~~(a) For a first low level violation, the department may~~  
13 ~~sanction))~~ by sanctioning the offender to one or more nonconfinement  
14 sanctions ~~((-~~

15 ~~(b) For a second or subsequent low level violation, the~~  
16 ~~department may sanction the offender))~~ or to not more than three days  
17 in total confinement.

18 ~~((i))~~ (a) The department shall develop rules to ensure that  
19 each offender subject to a short-term confinement sanction is  
20 provided the opportunity to respond to the alleged violation prior to  
21 imposition of total confinement.

22 ~~((ii))~~ (b) The offender may appeal the short-term confinement  
23 sanction to a panel of three reviewing officers designated by the  
24 secretary or by the secretary's designee. The offender's appeal must  
25 be in writing and hand-delivered to department staff, or postmarked,  
26 within seven days after the sanction is imposed.

27 (4) If an offender is accused of committing a high level  
28 violation, the department may sanction the offender to not more than  
29 thirty days in total confinement per hearing.

30 (a) The offender is entitled to a hearing prior to the imposition  
31 of sanctions; and

32 (b) The offender may be held in total confinement pending a  
33 sanction hearing. Prehearing time served must be credited to the  
34 offender's sanction time.

35 ~~((If the offender's underlying offense is one of the~~  
36 ~~following felonies and the violation behavior constitutes a new~~  
37 ~~misdemeanor, gross misdemeanor or felony, the offender shall be held~~  
38 ~~in total confinement pending a sanction hearing, and until the~~  
39 ~~sanction expires or until if a prosecuting attorney files new charges~~  
40 ~~against the offender, whichever occurs first:~~

- 1 ~~(a) Assault in the first degree, as defined in RCW 9A.36.011;~~  
2 ~~(b) Assault of a child in the first degree, as defined in RCW~~  
3 ~~9A.36.120;~~  
4 ~~(c) Assault of a child in the second degree, as defined in RCW~~  
5 ~~9A.36.130;~~  
6 ~~(d) Burglary in the first degree, as defined in RCW 9A.52.020;~~  
7 ~~(e) Child molestation in the first degree, as defined in RCW~~  
8 ~~9A.44.083;~~  
9 ~~(f) Commercial sexual abuse of a minor, as defined in RCW~~  
10 ~~9.68A.100;~~  
11 ~~(g) Dealing in depictions of a minor engaged in sexually explicit~~  
12 ~~conduct, as defined in RCW 9.68A.050;~~  
13 ~~(h) Homicide by abuse, as defined in RCW 9A.32.055;~~  
14 ~~(i) Indecent liberties with forcible compulsion, as defined in~~  
15 ~~RCW 9A.44.100(1)(a);~~  
16 ~~(j) Indecent liberties with a person capable of consent, as~~  
17 ~~defined in RCW 9A.44.100(1)(b);~~  
18 ~~(k) Kidnapping in the first degree, as defined in RCW 9A.40.020;~~  
19 ~~(l) Murder in the first degree, as defined in RCW 9A.32.030;~~  
20 ~~(m) Murder in the second degree, as defined in RCW 9A.32.050;~~  
21 ~~(n) Promoting commercial sexual abuse of a minor, as defined in~~  
22 ~~RCW 9.68A.101;~~  
23 ~~(o) Rape in the first degree, as defined in RCW 9A.44.040;~~  
24 ~~(p) Rape in the second degree, as defined in RCW 9A.44.050;~~  
25 ~~(q) Rape of a child in the first degree, as defined in RCW~~  
26 ~~9A.44.073;~~  
27 ~~(r) Rape of a child in the second degree, as defined in RCW~~  
28 ~~9A.44.076;~~  
29 ~~(s) Robbery in the first degree, as defined in RCW 9A.56.200;~~  
30 ~~(t) Sexual exploitation of a minor, as defined in RCW 9.68A.040;~~  
31 ~~or~~  
32 ~~(u) Vehicular homicide while under the influence of intoxicating~~  
33 ~~liquor or any drug, as defined in RCW 46.61.520(1)(a).~~

34 ~~(6))~~ The department shall adopt rules creating hearing  
35 procedures for high level violations. The hearings are offender  
36 disciplinary proceedings and are not subject to chapter 34.05 RCW.  
37 The procedures shall include the following:

38 (a) The department shall provide the offender with written notice  
39 of the alleged violation and the evidence supporting it. The notice  
40 must include a statement of the rights specified in this subsection,

1 and the offender's right to file a personal restraint petition under  
2 court rules after the final decision;

3 (b) Unless the offender waives the right to a hearing, the  
4 department shall hold a hearing, and shall record it electronically.  
5 For offenders not in total confinement, the department shall hold a  
6 hearing within fifteen business days, but not less than twenty-four  
7 hours, after written notice of the alleged violation. For offenders  
8 in total confinement, the department shall hold a hearing within five  
9 business days, but not less than twenty-four hours, after written  
10 notice of the alleged violation;

11 (c) The offender shall have the right to: (i) Be present at the  
12 hearing; (ii) have the assistance of a person qualified to assist the  
13 offender in the hearing, appointed by the hearing officer if the  
14 offender has a language or communications barrier; (iii) testify or  
15 remain silent; (iv) call witnesses and present documentary evidence;  
16 (v) question witnesses who appear and testify; and (vi) receive a  
17 written summary of the reasons for the hearing officer's decision;  
18 and

19 (d) The sanction shall take effect if affirmed by the hearing  
20 officer. The offender may appeal the sanction to a panel of three  
21 reviewing officers designated by the secretary or by the secretary's  
22 designee. The offender's appeal must be in writing and hand-delivered  
23 to department staff, or postmarked, within seven days after the  
24 sanction was imposed. The appeals panel shall affirm, reverse,  
25 modify, vacate, or remand based on its findings. If a majority of the  
26 panel finds that the sanction was not reasonably related to any of  
27 the following: (i) The crime of conviction; (ii) the violation  
28 committed; (iii) the offender's risk of reoffending; or (iv) the  
29 safety of the community, then the panel will reverse, vacate, remand,  
30 or modify the sanction.

31 ~~((7))~~ (6) For purposes of this section, the hearings officer  
32 may not rely on unconfirmed or unconfirmable allegations to find that  
33 the offender violated a condition.

34 ~~((8))~~ (7) Hearing officers shall report through a chain of  
35 command separate from that of community corrections officers.

36 **Sec. 2.** RCW 9.94A.631 and 2012 1st sp.s. c 6 s 1 are each  
37 amended to read as follows:

38 (1) If an offender violates any condition or requirement of a  
39 sentence, a community corrections officer may arrest or cause the

1 arrest of the offender without a warrant, pending a determination by  
2 the court or by the department. If there is reasonable cause to  
3 believe that an offender has violated a condition or requirement of  
4 the sentence, a community corrections officer may require an offender  
5 to submit to a search and seizure of the offender's person,  
6 residence, automobile, or other personal property.

7 (2) For the safety and security of department staff, an offender  
8 may be required to submit to pat searches, or other limited security  
9 searches, by community corrections officers, correctional officers,  
10 and other agency approved staff, without reasonable cause, when in or  
11 on department premises, grounds, or facilities, or while preparing to  
12 enter department premises, grounds, facilities, or vehicles. Pat  
13 searches of offenders shall be conducted only by staff who are the  
14 same gender as the offender, except in emergency situations.

15 (3) A community corrections officer may also arrest an offender  
16 for any crime committed in his or her presence. The facts and  
17 circumstances of the conduct of the offender shall be reported by the  
18 community corrections officer, with recommendations, to the court,  
19 local law enforcement, or local prosecution for consideration of new  
20 charges. The community corrections officer's report shall serve as  
21 the notice that the department will hold the offender for not more  
22 than three days from the time of such notice for the new crime(  
23 ~~except if the offender's underlying offense is a felony offense~~  
24 ~~listed in RCW 9.94A.737(5), in which case the department will hold~~  
25 ~~the offender for thirty days from the time of arrest or until a~~  
26 ~~prosecuting attorney charges the offender with a crime, whichever~~  
27 ~~occurs first)). This does not affect the department's authority under  
28 RCW 9.94A.737.~~

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

38 **Sec. 3.** RCW 9.94A.716 and 2012 1st sp.s. c 6 s 6 are each  
39 amended to read as follows:

1 (1) The secretary may issue warrants for the arrest of any  
2 offender who violates a condition of community custody. The arrest  
3 warrants shall authorize any law enforcement or peace officer or  
4 community corrections officer of this state or any other state where  
5 such offender may be located, to arrest the offender and place him or  
6 her in total confinement pending disposition of the alleged violation  
7 pursuant to RCW 9.94A.633.

8 (2) A community corrections officer, if he or she has reasonable  
9 cause to believe an offender has violated a condition of community  
10 custody, may suspend the person's community custody status and arrest  
11 or cause the arrest and detention in total confinement of the  
12 offender, pending the determination of the secretary as to whether  
13 the violation has occurred. The community corrections officer shall  
14 report to the secretary all facts and circumstances and the reasons  
15 for the action of suspending community custody status.

16 (3) If an offender has been arrested by the department for a new  
17 felony offense while under community custody, the facts and  
18 circumstances of the conduct of the offender shall be reported by the  
19 community corrections officer to local law enforcement or local  
20 prosecution for consideration of new charges. The community  
21 corrections officer's report shall serve as notice that the  
22 department will hold the offender in total confinement for not more  
23 than three days from the time of such notice for the new crime(~~(7~~  
24 ~~except if the offender's underlying offense is a felony offense~~  
25 ~~listed in RCW 9.94A.737(5), in which case the department will hold~~  
26 ~~the offender for thirty days from the time of arrest or until a~~  
27 ~~prosecuting attorney charges the offender with a crime, whichever~~  
28 ~~occurs first)). Nothing in this subsection shall be construed as to  
29 permit the department to hold an offender past his or her maximum  
30 term of total confinement if the offender has not completed the  
31 maximum term of total confinement or to permit the department to hold  
32 an offender past the offender's term of community custody.~~

33 (4) A violation of a condition of community custody shall be  
34 deemed a violation of the sentence for purposes of RCW 9.94A.631. The  
35 authority granted to community corrections officers under this  
36 section shall be in addition to that set forth in RCW 9.94A.631.

1        NEW SECTION.    **Sec. 4.**    Sections 1 through 3 of this act apply  
2    retrospectively and prospectively regardless of the date of an  
3    offender's underlying crime.

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