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**SUBSTITUTE SENATE BILL 6369**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Nguyen, Darneille, Stanford, Das, and Wilson, C.)

AN ACT Relating to individuals serving community custody terms; amending RCW 9.94A.737, 9.94A.631, and 9.94A.716; adding a new section to chapter 72.09 RCW; and creating new sections.

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

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

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

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

(b) After an offender has committed and been sanctioned for five low level violations, ((~~all~~)) subsequent violations committed by that offender ((~~shall automatically~~)) may be considered high level violations, provided that any decision to elevate a violation complies with policies and rules established by the department.

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

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

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

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

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

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

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

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

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

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

(5) If the offender's underlying offense is one of the following felonies provided in this subsection and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the earlier of: The date the sanction expires ((~~or until if~~)); the date a prosecuting attorney files new charges against the offender((~~, whichever occurs first~~)); or the date a prosecuting attorney provides the department with written notice that new charges will not be filed for the violation behavior. The following underlying offenses apply to the restrictions in this subsection:

(a) Assault in the first degree, as defined in RCW 9A.36.011;

(b) Assault of a child in the first degree, as defined in RCW 9A.36.120;

(c) Assault of a child in the second degree, as defined in RCW 9A.36.130;

(d) Burglary in the first degree, as defined in RCW 9A.52.020;

(e) Child molestation in the first degree, as defined in RCW 9A.44.083;

(f) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(g) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;

(h) Homicide by abuse, as defined in RCW 9A.32.055;

(i) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);

(j) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);

(k) Kidnapping in the first degree, as defined in RCW 9A.40.020;

(l) Murder in the first degree, as defined in RCW 9A.32.030;

(m) Murder in the second degree, as defined in RCW 9A.32.050;

(n) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101;

(o) Rape in the first degree, as defined in RCW 9A.44.040;

(p) Rape in the second degree, as defined in RCW 9A.44.050;

(q) Rape of a child in the first degree, as defined in RCW 9A.44.073;

(r) Rape of a child in the second degree, as defined in RCW 9A.44.076;

(s) Robbery in the first degree, as defined in RCW 9A.56.200;

(t) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or

(u) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

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

(a) The department shall provide the offender with written notice of the alleged violation and the evidence supporting it. The notice must include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The department shall track and collect data and information on violations of community custody conditions and the sanctions imposed for violations under RCW 9.94A.737, which includes, but is not limited to, the following:

(a) The number and types of high level violations and the types of sanctions imposed, including term lengths for confinement sanctions;

(b) The number and types of low level violations and the types of sanctions imposed, including nonconfinement sanctions, confinement sanctions, and term lengths for confinement sanctions;

(c) The circumstances and frequency at which low level violations are elevated to high level violations under RCW 9.94A.737(2)(b);

(d) The number of warrants issued for violations;

(e) The number of violations resulting in confinement under RCW 9.94A.737(5), including the length of the confinement, the number of times new charges are filed, and the number of times the department received written notice that new charges would not be filed;

(f) Trends in the rate of violations, including the rate of all violations, high level violations, and low level violations; and

(g) Trends in the rate of confinement, including frequency of confinement sanctions and average stays.

(2) The department shall submit a report with a summary of the data and information collected under this section, including statewide and regional trends, to the governor and appropriate committees of the legislature by November 1, 2021, and every November 1st of each year thereafter.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the department of corrections shall contract with an independent third party to provide a comprehensive review of the community corrections staffing model and develop an updated staffing model for use by the department of corrections. The updated model must include additional time and flexibility for community corrections officers to focus on case management, engagement, and interventions.

(2) The department of corrections shall submit a report, including a summary of the review and update, to the governor and appropriate committees of the legislature by July 1, 2021.

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

**--- END ---**