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HOUSE BILL 2826

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State of Washington                      62nd Legislature                      2012 1st Special Session

By Representative Hunter

Read first time 04/03/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to improving community supervision by replacing the  
2 current community custody violation process with a structured violation  
3 process applicable to all offenders under community custody regardless  
4 of underlying offense except only those sentenced to a work ethic camp,  
5 to an indeterminate sentence, under chapter 9.94B RCW for a crime  
6 committed prior to July 1, 2000, under the drug offender sentencing  
7 alternative, the special sex offender sentencing alternative, or the  
8 parenting sentencing alternative, encouraging new crimes to be  
9 addressed by local law enforcement, prohibiting offenders' possession  
10 of explosives, limiting a misdemeanor's term of probation under the  
11 department of corrections to twelve months, and implementing evidence-  
12 based practices; amending RCW 9.94A.631, 9.94A.704, 9.94A.706,  
13 9.94A.714, 9.94A.716, 9.94A.737, 9.94A.740, 9.95.210, and 9.95.210;  
14 reenacting and amending RCW 9.94A.633; creating new sections; providing  
15 effective dates; providing expiration dates; and declaring an  
16 emergency.

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

18            **Sec. 1.** RCW 9.94A.631 and 2009 c 390 s 1 are each amended to read  
19 as follows:

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

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

18 (3) A community corrections officer may also arrest an offender for  
19 any crime committed in his or her presence. The facts and  
20 circumstances of the conduct of the offender shall be reported by the  
21 community corrections officer, with recommendations, to the court (~~or~~  
22 ~~department of corrections hearing officer~~), local law enforcement, or  
23 local prosecution for consideration of new charges. The community  
24 corrections officer's report shall serve as the notice that the  
25 department will hold the offender for not more than three days from the  
26 time of such notice for the new crime. This does not affect the  
27 department's authority under RCW 9.94A.737.

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

1           **Sec. 2.** RCW 9.94A.633 and 2010 c 258 s 1 and 2010 c 224 s 12 are  
2 each reenacted and amended to read as follows:

3           (1)(a) An offender who violates any condition or requirement of a  
4 sentence may be sanctioned by the court with up to sixty days'  
5 confinement for each violation or by the department with up to thirty  
6 days' confinement as provided in RCW 9.94A.737.

7           (b) In lieu of confinement, an offender may be sanctioned with work  
8 release, home detention with electronic monitoring, work crew,  
9 community restitution, inpatient treatment, daily reporting, curfew,  
10 educational or counseling sessions, supervision enhanced through  
11 electronic monitoring, or any other community-based sanctions  
12 (~~(available in the community)~~).

13           (2) If an offender was under community custody pursuant to one of  
14 the following statutes, the offender may be sanctioned as follows:

15           (a) If the offender was transferred to community custody in lieu of  
16 earned early release in accordance with RCW 9.94A.728, the offender may  
17 be transferred to a more restrictive confinement status to serve up to  
18 the remaining portion of the sentence, less credit for any period  
19 actually spent in community custody or in detention awaiting  
20 disposition of an alleged violation.

21           (b) If the offender was sentenced under the drug offender  
22 sentencing alternative set out in RCW 9.94A.660, the offender may be  
23 sanctioned in accordance with that section.

24           (c) If the offender was sentenced under the parenting sentencing  
25 alternative set out in RCW 9.94A.655, the offender may be sanctioned in  
26 accordance with that section.

27           (d) If the offender was sentenced under the special sex offender  
28 sentencing alternative set out in RCW 9.94A.670, the suspended sentence  
29 may be revoked and the offender committed to serve the original  
30 sentence of confinement.

31           (e) If the offender was sentenced to a work ethic camp pursuant to  
32 RCW 9.94A.690, the offender may be reclassified to serve the unexpired  
33 term of his or her sentence in total confinement.

34           (f) If a sex offender was sentenced pursuant to RCW 9.94A.507, the  
35 offender may be transferred to a more restrictive confinement status to  
36 serve up to the remaining portion of the sentence, less credit for any  
37 period actually spent in community custody or in detention awaiting  
38 disposition of an alleged violation.

1 (3) If a probationer is being supervised by the department pursuant  
2 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
3 sanctioned pursuant to subsection (1) of this section. The department  
4 shall have authority to issue a warrant for the arrest of an offender  
5 who violates a condition of community custody, as provided in RCW  
6 9.94A.716. Any sanctions shall be imposed by the department pursuant  
7 to RCW 9.94A.737. ~~((The department shall provide a copy of the  
8 violation hearing report to the sentencing court in a timely manner.))~~  
9 Nothing in this subsection is intended to limit the power of the  
10 sentencing court to respond to a probationer's violation of conditions.

11 (4) The parole or probation of an offender who is charged with a  
12 new felony offense may be suspended and the offender placed in total  
13 confinement pending disposition of the new criminal charges if:

- 14 (a) The offender is on parole pursuant to RCW 9.95.110(1); or
- 15 (b) The offender is being supervised pursuant to RCW 9.94A.745 and  
16 is on parole or probation pursuant to the laws of another state.

17 **Sec. 3.** RCW 9.94A.704 and 2009 c 375 s 6 are each amended to read  
18 as follows:

19 (1) Every person who is sentenced to a period of community custody  
20 shall report to and be placed under the supervision of the department,  
21 subject to RCW 9.94A.501.

22 (2)(a) The department shall assess the offender's risk of reoffense  
23 and may establish and modify additional conditions of community custody  
24 based upon the risk to community safety.

25 (b) Within the funds available for community custody, the  
26 department shall determine conditions on the basis of risk to community  
27 safety, and shall supervise offenders during community custody on the  
28 basis of risk to community safety and conditions imposed by the court.  
29 The secretary shall adopt rules to implement the provisions of this  
30 subsection (2)(b).

31 (3) If the offender is supervised by the department, the department  
32 shall at a minimum instruct the offender to:

- 33 (a) Report as directed to a community corrections officer;
- 34 (b) Remain within prescribed geographical boundaries;
- 35 (c) Notify the community corrections officer of any change in the  
36 offender's address or employment;
- 37 (d) Pay the supervision fee assessment; and

1 (e) Disclose the fact of supervision to any mental health or  
2 chemical dependency treatment provider, as required by RCW 9.94A.722.

3 (4) The department may require the offender to participate in  
4 rehabilitative programs, or otherwise perform affirmative conduct, and  
5 to obey all laws.

6 (5) If the offender was sentenced pursuant to a conviction for a  
7 sex offense, the department may impose electronic monitoring. Within  
8 the resources made available by the department for this purpose, the  
9 department shall carry out any electronic monitoring using the most  
10 appropriate technology given the individual circumstances of the  
11 offender. As used in this section, "electronic monitoring" means the  
12 monitoring of an offender using an electronic offender tracking system  
13 including, but not limited to, a system using radio frequency or active  
14 or passive global positioning system technology.

15 (6) The department may not impose conditions that are contrary to  
16 those ordered by the court and may not contravene or decrease court-  
17 imposed conditions.

18 (7)(a) The department shall notify the offender in writing of any  
19 additional conditions or modifications.

20 (b) By the close of the next business day after receiving notice of  
21 a condition imposed or modified by the department, an offender may  
22 request an administrative review under rules adopted by the department.  
23 The condition shall remain in effect unless the reviewing officer finds  
24 that it is not reasonably related to the crime of conviction, the  
25 offender's risk of reoffending, or the safety of the community.

26 (8) The department shall notify the offender in writing upon  
27 community custody intake of the department's violation process.

28 (9) The department may require offenders to pay for special  
29 services rendered including electronic monitoring, day reporting, and  
30 telephone reporting, dependent on the offender's ability to pay. The  
31 department may pay for these services for offenders who are not able to  
32 pay.

33 ~~((+9))~~ (10)(a) When a sex offender has been sentenced pursuant to  
34 RCW 9.94A.507, the department shall assess the offender's risk of  
35 recidivism and shall recommend to the board any additional or modified  
36 conditions based upon the offender's risk to community safety and may  
37 recommend affirmative conduct or electronic monitoring consistent with  
38 subsections (4) through (6) of this section.

1 (b) The board may impose conditions in addition to court-ordered  
2 conditions. The board must consider and may impose department-  
3 recommended conditions.

4 (c) By the close of the next business day, after receiving notice  
5 of a condition imposed by the board or the department, an offender may  
6 request an administrative hearing under rules adopted by the board.  
7 The condition shall remain in effect unless the hearing examiner finds  
8 that it is not reasonably related to any of the following:

- 9 (i) The crime of conviction;  
10 (ii) The offender's risk of reoffending;  
11 (iii) The safety of the community.

12 (d) If the department finds that an emergency exists requiring the  
13 immediate imposition of additional conditions in order to prevent the  
14 offender from committing a crime, the department may impose such  
15 conditions. The department may not impose conditions that are contrary  
16 to those set by the board or the court and may not contravene or  
17 decrease court-imposed or board-imposed conditions. Conditions imposed  
18 under this subsection shall take effect immediately after notice to the  
19 offender by personal service, but shall not remain in effect longer  
20 than seven working days unless approved by the board.

21 ~~((+10))~~ (11) In setting, modifying, and enforcing conditions of  
22 community custody, the department shall be deemed to be performing a  
23 quasi-judicial function.

24 **Sec. 4.** RCW 9.94A.706 and 2008 c 231 s 11 are each amended to read  
25 as follows:

26 (1) No offender sentenced to a term of community custody under the  
27 supervision of the department may own, use, or possess firearms ~~((or))~~ ,  
28 ammunition, or explosives. ~~((Offenders who own, use, or are found to~~  
29 ~~be in))~~ An offender's actual or constructive possession of firearms  
30 ((or)) , ammunition, or explosives shall be ~~((subject to the violation~~  
31 ~~process and))~~ reported to local law enforcement or local prosecution  
32 for consideration of new charges and subject to sanctions under RCW  
33 9.94A.633 ~~((, 9.94A.716, and))~~ or 9.94A.737.

34 (2) For the purposes of this section:

35 (a) "Constructive possession" ~~((as used in this section))~~ means the  
36 power and intent to control the firearm ~~((or))~~ , ammunition, or  
37 explosives.

1 (b) "Explosives" has the same definition as in RCW 46.04.170.

2 (c) "Firearm" ((as used in this section)) has the same definition  
3 as in RCW 9.41.010.

4 **Sec. 5.** RCW 9.94A.714 and 2008 c 231 s 16 are each amended to read  
5 as follows:

6 (1) ~~((If an offender has not completed his or her maximum term of~~  
7 ~~total confinement and is subject to a third violation hearing pursuant~~  
8 ~~to RCW 9.94A.737 for any violation of community custody and is found to~~  
9 ~~have committed the violation, the department shall return the offender~~  
10 ~~to total confinement in a state correctional facility to serve up to~~  
11 ~~the remaining portion of his or her sentence, unless it is determined~~  
12 ~~that returning the offender to a state correctional facility would~~  
13 ~~substantially interfere with the offender's ability to maintain~~  
14 ~~necessary community supports or to participate in necessary treatment~~  
15 ~~or programming and would substantially increase the offender's~~  
16 ~~likelihood of reoffending.~~

17 ~~(2))~~ The department may work with the Washington association of  
18 sheriffs and police chiefs to establish and operate an electronic  
19 monitoring program for ~~((low-risk))~~ offenders who violate the terms of  
20 their community custody.

21 ~~((3))~~ (2) Local governments, their subdivisions and employees,  
22 the department and its employees, and the Washington association of  
23 sheriffs and police chiefs and its employees are immune from civil  
24 liability for damages arising from incidents involving ~~((low-risk))~~  
25 offenders who are placed on electronic monitoring unless it is shown  
26 that an employee acted with gross negligence or bad faith.

27 **Sec. 6.** RCW 9.94A.716 and 2008 c 231 s 21 are each amended to read  
28 as follows:

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

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

9 (3) If an offender has been arrested by the department for a new  
10 felony offense while under community custody, ~~the ((department shall~~  
11 ~~hold the offender in total confinement until a hearing before the~~  
12 ~~department as provided in this section or until the offender has been~~  
13 ~~formally charged for the new felony offense, whichever is earlier))~~  
14 facts and circumstances of the conduct of the offender shall be  
15 reported by the community corrections officer to local law enforcement  
16 or local prosecution for consideration of new charges. The community  
17 corrections officer's report shall serve as notice that the department  
18 will hold the offender in total confinement for not more than three  
19 days from the time of arrest on the new felony offense. Nothing in  
20 this subsection shall be construed as to permit the department to hold  
21 an offender past his or her maximum term of total confinement if the  
22 offender has not completed the maximum term of total confinement or to  
23 permit the department to hold an offender past the offender's term of  
24 community custody.

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

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

31 (1) If an offender is accused of violating any condition or  
32 requirement of community custody, ~~((he or she is entitled to a hearing~~  
33 ~~before the department prior to the imposition of sanctions. The~~  
34 ~~hearing shall be considered as))~~ the department shall address the  
35 violation behavior. The department may hold offender disciplinary  
36 proceedings ~~((and shall))~~ not ~~((be))~~ subject to chapter 34.05 RCW. The

1 department shall (~~develop hearing procedures and a structure of~~  
2 ~~graduated sanctions~~) notify the offender in writing of the violation  
3 process.

4 (2) (~~The hearing procedures required under subsection (1) of this~~  
5 ~~section shall be developed by rule and include the following:~~) (a) The  
6 offender's violation behavior shall determine the sanction the  
7 department imposes. The department shall adopt rules creating a  
8 structured violation process that includes presumptive sanctions,  
9 aggravating and mitigating factors, and definitions for low level  
10 violations and high level violations.

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

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

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

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

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

27 (i) The department shall develop rules to ensure that each offender  
28 subject to a short term confinement sanction is provided the  
29 opportunity for a supervisory review prior to imposition of total  
30 confinement, at which time the offender may respond to the alleged  
31 violation.

32 (ii) The department shall adopt a rule defining supervisory review.

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

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

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

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

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

13 ~~((Hearing officers shall report through a chain of command~~  
14 ~~separate from that of community corrections officers;~~

15 ~~(b))~~ The department shall provide the offender with written notice  
16 of the alleged violation~~((7))~~ and the evidence ~~((relied upon, and the~~  
17 ~~reasons the particular sanction was imposed))~~ supporting it. The  
18 notice ~~((shall))~~ must include a statement of the rights specified in  
19 this subsection, and the offender's right to file a personal restraint  
20 petition under court rules after the final decision ~~((of the~~  
21 ~~department))~~;

22 ~~((c) The hearing shall be held))~~ (b) Unless ((waived by)) the  
23 offender waives the right to a hearing, the department shall hold a  
24 hearing, and shall ((be)) record it electronically ((recorded)). For  
25 offenders not in total confinement, the department shall hold a hearing  
26 ((shall be held)) within fifteen ((working)) business days, but not  
27 less than twenty-four hours, after written notice of the alleged  
28 violation. For offenders in total confinement, the department shall  
29 hold a hearing ((shall be held)) within five ((working)) business days,  
30 but not less than twenty-four hours, after written notice of the  
31 alleged violation;

32 ~~((d))~~ (c) The offender shall have the right to: (i) Be present  
33 at the hearing; (ii) have the assistance of a person qualified to  
34 assist the offender in the hearing, appointed by the hearing officer if  
35 the offender has a language or communications barrier; (iii) testify or  
36 remain silent; (iv) call witnesses and present documentary evidence;  
37 ((and)) (v) question witnesses who appear and testify; and (vi) receive

1 a written summary of the reasons for the hearing officer's decision;  
2 and

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

17 ~~((3))~~ (6) For purposes of this section, ~~((no finding of a~~  
18 ~~violation of conditions may be based on unconfirmed or unconfirmable~~  
19 ~~allegations))~~ the hearings officer may not rely on unconfirmed or  
20 unconfirmable allegations to find that the offender violated a  
21 condition.

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

24 **Sec. 8.** RCW 9.94A.740 and 2008 c 231 s 22 are each amended to read  
25 as follows:

26 (1) When an offender is arrested pursuant to RCW 9.94A.631 or  
27 9.94A.716, the department shall compensate the local jurisdiction at  
28 the office of financial management's adjudicated rate, in accordance  
29 with RCW 70.48.440, until the department releases its detainer.

30 (2) Inmates, as defined in RCW 72.09.015, who have been transferred  
31 to community custody and who are detained in a local correctional  
32 facility are the financial responsibility of the department of  
33 corrections, except as provided in subsection (3) of this section.

34 (3) For confinement sanctions imposed by the department under RCW  
35 9.94A.670, the local correctional facility shall be financially  
36 responsible.

1 (4) The department, in consultation with the Washington association  
2 of sheriffs and police chiefs and those counties in which the sheriff  
3 does not operate a correctional facility, shall establish a methodology  
4 for determining the department's local correctional facilities bed  
5 utilization rate, for each county in calendar year 1998, for offenders  
6 being held for violations of conditions of community custody.

7 (5) Except as provided in subsections (1) and (2) of this section,  
8 the local correctional facility shall continue to be financially  
9 responsible to the extent of the calendar year 1998 bed utilization  
10 rate for confinement sanctions imposed by the department pursuant to  
11 RCW 9.94A.737. If the department's use of bed space in local  
12 correctional facilities of any county for such confinement sanctions  
13 exceeds the 1998 bed utilization rate for the county, the department  
14 shall compensate the county for the excess use at the per diem rate  
15 equal to the lowest rate charged by the county under its contract with  
16 a municipal government during the year in which the use occurs.

17 **Sec. 9.** RCW 9.95.210 and 2011 1st sp.s. c 40 s 7 are each amended  
18 to read as follows:

19 (1) In granting probation, the superior court may suspend the  
20 imposition or the execution of the sentence and may direct that the  
21 suspension may continue upon such conditions and for such time as it  
22 shall designate, not exceeding the maximum term of sentence or two  
23 years, whichever is longer.

24 (2) In the order granting probation and as a condition thereof, the  
25 superior court may in its discretion imprison the defendant in the  
26 county jail for a period not exceeding one year and may fine the  
27 defendant any sum not exceeding the statutory limit for the offense  
28 committed, and court costs. As a condition of probation, the superior  
29 court shall require the payment of the penalty assessment required by  
30 RCW 7.68.035. The superior court may also require the defendant to  
31 make such monetary payments, on such terms as it deems appropriate  
32 under the circumstances, as are necessary: (a) To comply with any  
33 order of the court for the payment of family support; (b) to make  
34 restitution to any person or persons who may have suffered loss or  
35 damage by reason of the commission of the crime in question or when the  
36 offender pleads guilty to a lesser offense or fewer offenses and agrees  
37 with the prosecutor's recommendation that the offender be required to

1 pay restitution to a victim of an offense or offenses which are not  
2 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
3 imposed and court costs, including reimbursement of the state for costs  
4 of extradition if return to this state by extradition was required; (d)  
5 following consideration of the financial condition of the person  
6 subject to possible electronic monitoring, to pay for the costs of  
7 electronic monitoring if that monitoring was required by the court as  
8 a condition of release from custody or as a condition of probation; (e)  
9 to contribute to a county or interlocal drug fund; and (f) to make  
10 restitution to a public agency for the costs of an emergency response  
11 under RCW 38.52.430, and may require bonds for the faithful observance  
12 of any and all conditions imposed in the probation.

13 (3) The superior court shall order restitution in all cases where  
14 the victim is entitled to benefits under the crime victims'  
15 compensation act, chapter 7.68 RCW. If the superior court does not  
16 order restitution and the victim of the crime has been determined to be  
17 entitled to benefits under the crime victims' compensation act, the  
18 department of labor and industries, as administrator of the crime  
19 victims' compensation program, may petition the superior court within  
20 one year of imposition of the sentence for entry of a restitution  
21 order. Upon receipt of a petition from the department of labor and  
22 industries, the superior court shall hold a restitution hearing and  
23 shall enter a restitution order.

24 (4) In granting probation, the superior court may order the  
25 probationer to report to the secretary of corrections or such officer  
26 as the secretary may designate and as a condition of the probation to  
27 follow the instructions of the secretary for up to twelve months. If  
28 the county legislative authority has elected to assume responsibility  
29 for the supervision of superior court misdemeanor probationers within  
30 its jurisdiction, the superior court misdemeanor probationer shall  
31 report to a probation officer employed or contracted for by the county.  
32 In cases where a superior court misdemeanor probationer is sentenced  
33 in one county, but resides within another county, there must be  
34 provisions for the probationer to report to the agency having  
35 supervision responsibility for the probationer's county of residence.

36 (5) If the probationer has been ordered to make restitution and the  
37 superior court has ordered supervision, the officer supervising the  
38 probationer shall make a reasonable effort to ascertain whether

1 restitution has been made. If the superior court has ordered  
2 supervision and restitution has not been made as ordered, the officer  
3 shall inform the prosecutor of that violation of the terms of probation  
4 not less than three months prior to the termination of the probation  
5 period. The secretary of corrections will promulgate rules and  
6 regulations for the conduct of the person during the term of probation.  
7 For defendants found guilty in district court, like functions as the  
8 secretary performs in regard to probation may be performed by probation  
9 officers employed for that purpose by the county legislative authority  
10 of the county wherein the court is located.

11 (6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to  
12 sentences imposed under this section.

13 **Sec. 10.** RCW 9.95.210 and 2012 c ... (2SHB 2443) s 4 are each  
14 amended to read as follows:

15 (1)(a) Except as provided in (b) of this subsection in granting  
16 probation, the superior court may suspend the imposition or the  
17 execution of the sentence and may direct that the suspension may  
18 continue upon such conditions and for such time as it shall designate,  
19 not exceeding the maximum term of sentence or two years, whichever is  
20 longer.

21 (b) For a defendant sentenced under RCW 46.61.5055, the superior  
22 court may suspend the imposition or the execution of the sentence and  
23 may direct that the suspension continue upon such conditions and for  
24 such time as the court shall designate, not to exceed five years. The  
25 court shall have continuing jurisdiction and authority to suspend the  
26 execution of all or any part of the sentence upon stated terms,  
27 including installment payment of fines. A defendant who has been  
28 sentenced, and who then fails to appear for any hearing to address the  
29 defendant's compliance with the terms of probation when ordered to do  
30 so by the court shall have the term of probation tolled until such time  
31 as the defendant makes his or her presence known to the court on the  
32 record. Any time before entering an order terminating probation, the  
33 court may modify or revoke its order suspending the imposition or  
34 execution of the sentence if the defendant violates or fails to carry  
35 out any of the conditions of the suspended sentence.

36 (2) In the order granting probation and as a condition thereof, the  
37 superior court may in its discretion imprison the defendant in the

1 county jail for a period not exceeding one year and may fine the  
2 defendant any sum not exceeding the statutory limit for the offense  
3 committed, and court costs. As a condition of probation, the superior  
4 court shall require the payment of the penalty assessment required by  
5 RCW 7.68.035. The superior court may also require the defendant to  
6 make such monetary payments, on such terms as it deems appropriate  
7 under the circumstances, as are necessary: (a) To comply with any  
8 order of the court for the payment of family support; (b) to make  
9 restitution to any person or persons who may have suffered loss or  
10 damage by reason of the commission of the crime in question or when the  
11 offender pleads guilty to a lesser offense or fewer offenses and agrees  
12 with the prosecutor's recommendation that the offender be required to  
13 pay restitution to a victim of an offense or offenses which are not  
14 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
15 imposed and court costs, including reimbursement of the state for costs  
16 of extradition if return to this state by extradition was required; (d)  
17 following consideration of the financial condition of the person  
18 subject to possible electronic monitoring, to pay for the costs of  
19 electronic monitoring if that monitoring was required by the court as  
20 a condition of release from custody or as a condition of probation; (e)  
21 to contribute to a county or interlocal drug fund; and (f) to make  
22 restitution to a public agency for the costs of an emergency response  
23 under RCW 38.52.430, and may require bonds for the faithful observance  
24 of any and all conditions imposed in the probation.

25 (3) The superior court shall order restitution in all cases where  
26 the victim is entitled to benefits under the crime victims'  
27 compensation act, chapter 7.68 RCW. If the superior court does not  
28 order restitution and the victim of the crime has been determined to be  
29 entitled to benefits under the crime victims' compensation act, the  
30 department of labor and industries, as administrator of the crime  
31 victims' compensation program, may petition the superior court within  
32 one year of imposition of the sentence for entry of a restitution  
33 order. Upon receipt of a petition from the department of labor and  
34 industries, the superior court shall hold a restitution hearing and  
35 shall enter a restitution order.

36 (4) In granting probation, the superior court may order the  
37 probationer to report to the secretary of corrections or such officer  
38 as the secretary may designate and as a condition of the probation to

1 follow the instructions of the secretary for up to twelve months. If  
2 the county legislative authority has elected to assume responsibility  
3 for the supervision of superior court misdemeanor probationers within  
4 its jurisdiction, the superior court misdemeanor probationer shall  
5 report to a probation officer employed or contracted for by the county.  
6 In cases where a superior court misdemeanor probationer is sentenced  
7 in one county, but resides within another county, there must be  
8 provisions for the probationer to report to the agency having  
9 supervision responsibility for the probationer's county of residence.

10 (5) If the probationer has been ordered to make restitution and the  
11 superior court has ordered supervision, the officer supervising the  
12 probationer shall make a reasonable effort to ascertain whether  
13 restitution has been made. If the superior court has ordered  
14 supervision and restitution has not been made as ordered, the officer  
15 shall inform the prosecutor of that violation of the terms of probation  
16 not less than three months prior to the termination of the probation  
17 period. The secretary of corrections will promulgate rules and  
18 regulations for the conduct of the person during the term of probation.  
19 For defendants found guilty in district court, like functions as the  
20 secretary performs in regard to probation may be performed by probation  
21 officers employed for that purpose by the county legislative authority  
22 of the county wherein the court is located.

23 (6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to  
24 sentences imposed under this section.

25 NEW SECTION. **Sec. 11.** (1)(a) The legislature finds that  
26 traditional mechanisms of surveillance-based supervision and  
27 sanctioning are ineffective in reducing recidivism or improving public  
28 safety. The legislature is persuaded by recent research showing that  
29 swift and certain sanctions, in combination with treatment-based  
30 interventions that address chemical dependency and criminogenic  
31 behaviors, are a more effective and efficient use of public resources  
32 to affect future crime.

33 (b) Notwithstanding, this is a new approach for Washington. It is  
34 imperative to the success of the state's system of offender supervision  
35 that the department of corrections be vigilant in:

36 (i) Monitoring the quality and consistency of applying swift and  
37 certain sanctions across the state;

1 (ii) Ensuring that sanctions are commensurate with identified  
2 behaviors and, to the extent possible, produce satisfactory results;

3 (iii) Applying evidence-based treatment and evaluation principles  
4 to address offenders' criminogenic and chemical dependency needs and  
5 therefore pairing the offender with the appropriate treatment; and

6 (iv) Maintaining good relations and open communication with law  
7 enforcement to assist in identifying offenders that pose the greatest  
8 risk to public safety.

9 (2) In implementing the provisions of this act, the department of  
10 corrections is directed to:

11 (a) Form stakeholder groups, that may include but are not limited  
12 to local community corrections officers, law enforcement, prosecuting  
13 attorneys, superior court judges, chemical dependency treatment and  
14 other community providers, and victim advocates;

15 (b) Within available resources, provide inpatient or outpatient  
16 chemical dependency treatment to offenders initially assessed as in  
17 need of treatment based on an evaluation of the offender's needs by a  
18 certified staff or chemical dependency provider utilizing evidence-  
19 based tools for evaluation;

20 (c) Perform outreach to the criminal justice training commission  
21 and local law enforcement agencies to ensure law enforcement is  
22 informed of changes in procedures for holding offenders pending the  
23 filing of charges for a new crime and establish ongoing channels of  
24 communication with local law enforcement for conveying information  
25 about individual offenders who have committed new crimes;

26 (d) Survey community corrections officers on a periodic basis to  
27 gather input and suggestions.

28 (3) The department shall report to the governor, appropriate  
29 committees of the legislature, and the stakeholder groups as identified  
30 in subsection (2)(a) of this section on its progress and activities in  
31 implementing this act, steps taken to improve the efficacy of chemical  
32 dependency treatment, evidence of outcomes achieved as reported by  
33 providers through submission of performance measure data, and including  
34 any recommended changes in legislation, no later than December 1, 2012,  
35 and December 1, 2013.

36 (4) This section expires December 31, 2013.

1        NEW SECTION.    **Sec. 12.**    This act applies retroactively and  
2 prospectively regardless of the date of an offender's underlying  
3 offense.

4        NEW SECTION.    **Sec. 13.**    If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8        NEW SECTION.    **Sec. 14.**    Section 2 of this act is necessary for the  
9 immediate preservation of the public peace, health, or safety, or  
10 support of the state government and its existing public institutions,  
11 and takes effect immediately.

12       NEW SECTION.    **Sec. 15.**    Sections 1, 3 through 9, and 11 through 14  
13 of this act are necessary for the immediate preservation of the public  
14 peace, health, or safety, or support of the state government and its  
15 existing public institutions, and take effect June 1, 2012.

16       NEW SECTION.    **Sec. 16.**    Section 9 of this act expires August 1,  
17 2012.

18       NEW SECTION.    **Sec. 17.**    Section 10 of this act takes effect August  
19 1, 2012.

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