
HOUSE BILL 2435

State of Washington**66th Legislature****2020 Regular Session****By** Representative Klippert

Read first time 01/14/20. Referred to Committee on Public Safety.

1 AN ACT Relating to sanctions for violating community custody
2 conditions; amending RCW 9.94A.737, 9.94A.631, and 9.94A.716; and
3 creating a new 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 (2)(b) After an offender has committed and been sanctioned for five
18 low level violations, all subsequent violations committed by that
19 offender shall automatically be considered high level violations.

20 (2)(c)(i) The department must define aggravating factors that
21 indicate the offender may present a current and ongoing foreseeable

1 risk and which therefore((r)) elevate an offender's behavior to a
2 high level violation process.

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

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

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

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

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

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

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

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

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

32 (5) If the offender's underlying offense is one of the following
33 felonies provided in this subsection and the violation behavior
34 constitutes a new misdemeanor, gross misdemeanor, or felony, the
35 offender shall be held in total confinement pending a sanction
36 hearing, and until the earlier of: The date the sanction expires ((or
37 until if)); the date a prosecuting attorney files new charges against
38 the offender((, whichever occurs first)); or the date a prosecuting
39 attorney provides the department with written notice that new charges

1 will not be filed for the violation behavior. The following
2 underlying offenses apply to the restrictions in this subsection:

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

4 (b) Assault of a child in the first degree, as defined in RCW
5 9A.36.120;

6 (c) Assault of a child in the second degree, as defined in RCW
7 9A.36.130;

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

9 (e) Child molestation in the first degree, as defined in RCW
10 9A.44.083;

11 (f) Commercial sexual abuse of a minor, as defined in RCW
12 9.68A.100;

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

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

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

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

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

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

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

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

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

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

27 (q) Rape of a child in the first degree, as defined in RCW
28 9A.44.073;

29 (r) Rape of a child in the second degree, as defined in RCW
30 9A.44.076;

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

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

33 or

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

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

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

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

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

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

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

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

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

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

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

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

34 If a community corrections officer arrests or causes the arrest
35 of an offender under this section, the offender shall be confined and
36 detained in the county jail of the county in which the offender was
37 taken into custody, and the sheriff of that county shall receive and
38 keep in the county jail, where room is available, all prisoners
39 delivered to the jail by the community corrections officer, and such
40 offenders shall not be released from custody on bail or personal

1 recognition, except upon approval of the court or authorized
2 department staff, pursuant to a written order.

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

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

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

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

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

5 NEW SECTION. **Sec. 4.** This act applies retroactively and
6 prospectively regardless of the date of an offender's underlying
7 crime.

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