

RCW 9.94A.737 Community custody—Violations—Disciplinary proceedings—Structured violation process—Sanctions. (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, subsequent violations committed by that offender 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 by sanctioning the offender to one or more nonconfinement sanctions or to not more than three days in total confinement.

(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.

(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; the date a prosecuting attorney files new charges against the offender; 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. [2020 c 82 § 1; 2012 1st sp.s. c 6 § 7; 2008 c 231 § 20; (2009 c 375 § 13 expired August 1, 2009); 2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

Retroactive application—2020 c 82 §§ 1-3: "Sections 1 through 3 of this act apply retroactively and prospectively regardless of the date of an offender's underlying crime." [2020 c 82 § 6.]

Appropriation—Report—2020 c 82: "(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." [2020 c 82 § 5.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—2007 c 483: See RCW 72.78.005.

Finding—Intent—2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Finding—1996 c 275: See note following RCW 9.94A.505.

Application—1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Effective date—Application of increased sanctions—1988 c 153:
See notes following RCW 9.94A.030.