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**SUBSTITUTE SENATE BILL 5749**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Children & Family Services & Corrections  
(originally sponsored by Senators Hargrove, Stevens and Rasmussen; by  
request of Indeterminate Sentence Review Board)

READ FIRST TIME 02/24/03.

1       AN ACT Relating to hearings concerning violations by sex offenders  
2 of postrelease conditions; and amending RCW 9.95.435.

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

4       **Sec. 1.** RCW 9.95.435 and 2002 c 175 s 17 are each amended to read  
5 as follows:

6       (1) If an offender released by the board under RCW 9.95.420  
7 violates any condition or requirement of community custody, the board  
8 may transfer the offender to a more restrictive confinement status to  
9 serve up to the remaining portion of the sentence, less credit for any  
10 period actually spent in community custody or in detention awaiting  
11 disposition of an alleged violation and subject to the limitations of  
12 subsection (2) of this section.

13       (2) Following the hearing specified in subsection (3) of this  
14 section, the board may impose sanctions such as work release, home  
15 detention with electronic monitoring, work crew, community restitution,  
16 inpatient treatment, daily reporting, curfew, educational or counseling  
17 sessions, supervision enhanced through electronic monitoring, or any  
18 other sanctions available in the community, or may suspend or revoke

1 the release to community custody whenever an offender released by the  
2 board under RCW 9.95.420 violates any condition or requirement of  
3 community custody.

4 (3) If an offender released by the board under RCW 9.95.420 is  
5 accused of violating any condition or requirement of community custody,  
6 he or she is entitled to a hearing before the board or a designee of  
7 the board prior to the imposition of sanctions. The hearing shall be  
8 considered as offender disciplinary proceedings and shall not be  
9 subject to chapter 34.05 RCW. The board shall develop hearing  
10 procedures and a structure of graduated sanctions consistent with the  
11 hearing procedures and graduated sanctions developed pursuant to RCW  
12 9.94A.737. The board may suspend the offender's release to community  
13 custody and confine the offender in a correctional institution owned,  
14 operated by, or operated under contract with the state prior to the  
15 hearing unless the offender has been arrested and confined for a new  
16 criminal offense.

17 (4) The hearing procedures required under subsection (3) of this  
18 section shall be developed by rule and include the following:

19 (a) Hearings shall be conducted by members or designees of the  
20 board unless the board enters into an agreement with the department to  
21 use the hearing officers established under RCW 9.94A.737;

22 (b) The board shall provide the offender with written notice of the  
23 violation, the evidence relied upon, and the reasons the particular  
24 sanction was imposed. The notice shall include a statement of the  
25 rights specified in this subsection, and the offender's right to file  
26 a personal restraint petition under court rules after the final  
27 decision of the board;

28 (c) The hearing shall be held unless waived by the offender, and  
29 shall be electronically recorded. For offenders not in total  
30 confinement, the hearing shall be held within (~~fifteen working~~)  
31 thirty days of service of notice of the violation, but not less than  
32 twenty-four hours after notice of the violation. For offenders in  
33 total confinement, the hearing shall be held within (~~five working~~)  
34 thirty days of service of notice of the violation, but not less than  
35 twenty-four hours after notice of the violation. The board or its  
36 designee shall make a determination whether probable cause exists to  
37 believe the violation or violations occurred. The determination shall  
38 be made within forty-eight hours of receipt of the allegation;

1 (d) The offender shall have the right to: (i) Be present at the  
2 hearing; (ii) have the assistance of a person qualified to assist the  
3 offender in the hearing, appointed by the hearing examiner if the  
4 offender has a language or communications barrier; (iii) testify or  
5 remain silent; (iv) call witnesses and present documentary evidence;  
6 (v) question witnesses who appear and testify; and (vi) be represented  
7 by counsel if revocation of the release to community custody upon a  
8 finding of violation is a (~~possible~~) probable sanction for the  
9 violation. The board may not revoke the release to community custody  
10 of any offender who was not represented by counsel at the hearing,  
11 unless the offender has waived the right to counsel; and

12 (e) The sanction shall take effect if affirmed by the hearing  
13 examiner. Within seven days after the hearing examiner's decision, the  
14 offender may appeal the decision to a panel of three reviewing  
15 examiners designated by the chair of the board or by the chair's  
16 designee. The sanction shall be reversed or modified if a majority of  
17 the panel finds that the sanction was not reasonably related to any of  
18 the following: (i) The crime of conviction; (ii) the violation  
19 committed; (iii) the offender's risk of reoffending; or (iv) the safety  
20 of the community.

21 (5) For purposes of this section, no finding of a violation of  
22 conditions may be based on unconfirmed or unconfirmable allegations.

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