

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2407

59th Legislature
2006 Regular Session

Passed by the House March 6, 2006
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 28, 2006
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2407** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2407

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Lovick, Strow, O'Brien, Ericks, Dunshee, Linville, Grant, Lantz, Kessler, Williams, Blake, Morrell, Rodne, Hunt, Conway, P. Sullivan, Springer, Takko, Kilmer, Fromhold, B. Sullivan, Hunter, Simpson, Green, Miloscia, Sells, Upthegrove, Campbell and Ormsby)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to electronic monitoring of sex offenders; amending
2 RCW 9.94A.713 and 9.94A.715; and adding a new section to chapter 4.24
3 RCW.

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

5 **Sec. 1.** RCW 9.94A.713 and 2001 2nd sp.s. c 12 s 304 are each
6 amended to read as follows:

7 (1) When an offender is sentenced under RCW 9.94A.712, the
8 department shall assess the offender's risk of recidivism and shall
9 recommend to the board any additional or modified conditions of the
10 offender's community custody based upon the risk to community safety.
11 In addition, the department shall make a recommendation with regard to,
12 and the board may require the offender to participate in,
13 rehabilitative programs, or otherwise perform affirmative conduct, and
14 obey all laws. The department may recommend and, if recommended, the
15 board may impose electronic monitoring as a condition of community
16 custody for the offender. Within the resources made available by the
17 department for this purpose, the department shall carry out any
18 monitoring imposed under this section using the most appropriate
19 technology given the individual circumstances of the offender. As used

1 in this section, "electronic monitoring" means the monitoring of an
2 offender using an electronic offender tracking system including, but
3 not limited to, a system using radio frequency or active or passive
4 global positioning technology. The board must consider and may impose
5 department-recommended conditions.

6 (2) The department may not recommend and the board may not impose
7 conditions that are contrary to those ordered by the court and may not
8 contravene or decrease court-imposed conditions. The board shall
9 notify the offender in writing of any such conditions or modifications.

10 (3) In setting, modifying, and enforcing conditions of community
11 custody, the department shall be deemed to be performing a quasi-
12 judicial function.

13 (4) If an offender violates conditions imposed by the court, the
14 department, or the board during community custody, the board or the
15 department may transfer the offender to a more restrictive confinement
16 status and impose other available sanctions as provided in RCW
17 9.95.435.

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

- 23 (a) The crime of conviction;
- 24 (b) The offender's risk of reoffending; or
- 25 (c) The safety of the community.

26 (6) An offender released by the board under RCW 9.95.420 shall be
27 subject to the supervision of the department until the expiration of
28 the maximum term of the sentence. The department shall monitor the
29 offender's compliance with conditions of community custody imposed by
30 the court, department, or board, and promptly report any violations to
31 the board. Any violation of conditions of community custody
32 established or modified by the board shall be subject to the provisions
33 of RCW 9.95.425 through 9.95.440.

34 (7) If the department finds that an emergency exists requiring the
35 immediate imposition of conditions of release in addition to those set
36 by the board under RCW 9.95.420 and subsection (1) of this section in
37 order to prevent the offender from committing a crime, the department
38 may impose additional conditions. The department may not impose

1 conditions that are contrary to those set by the board or the court and
2 may not contravene or decrease court-imposed or board-imposed
3 conditions. Conditions imposed under this subsection shall take effect
4 immediately after notice to the offender by personal service, but shall
5 not remain in effect longer than seven working days unless approved by
6 the board under subsection (1) of this section within seven working
7 days.

8 **Sec. 2.** RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read
9 as follows:

10 (1) When a court sentences a person to the custody of the
11 department for a sex offense not sentenced under RCW 9.94A.712, a
12 violent offense, any crime against persons under RCW 9.94A.411(2), or
13 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
14 after July 1, 2000, the court shall in addition to the other terms of
15 the sentence, sentence the offender to community custody for the
16 community custody range established under RCW 9.94A.850 or up to the
17 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
18 whichever is longer. The community custody shall begin: (a) Upon
19 completion of the term of confinement; (b) at such time as the offender
20 is transferred to community custody in lieu of earned release in
21 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
22 offenders sentenced under RCW 9.94A.660, upon failure to complete or
23 administrative termination from the special drug offender sentencing
24 alternative program. Except as provided in RCW 9.94A.501, the
25 department shall supervise any sentence of community custody imposed
26 under this section.

27 (2)(a) Unless a condition is waived by the court, the conditions of
28 community custody shall include those provided for in RCW 9.94A.700(4).
29 The conditions may also include those provided for in RCW 9.94A.700(5).
30 The court may also order the offender to participate in rehabilitative
31 programs or otherwise perform affirmative conduct reasonably related to
32 the circumstances of the offense, the offender's risk of reoffending,
33 or the safety of the community, and the department shall enforce such
34 conditions pursuant to subsection (6) of this section.

35 (b) As part of any sentence that includes a term of community
36 custody imposed under this subsection, the court shall also require the
37 offender to comply with any conditions imposed by the department under

1 RCW 9.94A.720. The department shall assess the offender's risk of
2 reoffense and may establish and modify additional conditions of the
3 offender's community custody based upon the risk to community safety.
4 In addition, the department may require the offender to participate in
5 rehabilitative programs, or otherwise perform affirmative conduct, and
6 to obey all laws. The department may impose electronic monitoring as
7 a condition of community custody for an offender sentenced to a term of
8 community custody under this section pursuant to a conviction for a sex
9 offense. Within the resources made available by the department for
10 this purpose, the department shall carry out any electronic monitoring
11 imposed under this section using the most appropriate technology given
12 the individual circumstances of the offender. As used in this section,
13 "electronic monitoring" means the monitoring of an offender using an
14 electronic offender tracking system including, but not limited to, a
15 system using radio frequency or active or passive global positioning
16 system technology.

17 (c) The department may not impose conditions that are contrary to
18 those ordered by the court and may not contravene or decrease court
19 imposed conditions. The department shall notify the offender in
20 writing of any such conditions or modifications. In setting,
21 modifying, and enforcing conditions of community custody, the
22 department shall be deemed to be performing a quasi-judicial function.

23 (3) If an offender violates conditions imposed by the court or the
24 department pursuant to this section during community custody, the
25 department may transfer the offender to a more restrictive confinement
26 status and impose other available sanctions as provided in RCW
27 9.94A.737 and 9.94A.740.

28 (4) Except for terms of community custody under RCW 9.94A.670, the
29 department shall discharge the offender from community custody on a
30 date determined by the department, which the department may modify,
31 based on risk and performance of the offender, within the range or at
32 the end of the period of earned release, whichever is later.

33 (5) At any time prior to the completion or termination of a sex
34 offender's term of community custody, if the court finds that public
35 safety would be enhanced, the court may impose and enforce an order
36 extending any or all of the conditions imposed pursuant to this section
37 for a period up to the maximum allowable sentence for the crime as it
38 is classified in chapter 9A.20 RCW, regardless of the expiration of the

1 offender's term of community custody. If a violation of a condition
2 extended under this subsection occurs after the expiration of the
3 offender's term of community custody, it shall be deemed a violation of
4 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
5 contempt of court as provided for in RCW 7.21.040. If the court
6 extends a condition beyond the expiration of the term of community
7 custody, the department is not responsible for supervision of the
8 offender's compliance with the condition.

9 (6) Within the funds available for community custody, the
10 department shall determine conditions and duration of community custody
11 on the basis of risk to community safety, and shall supervise offenders
12 during community custody on the basis of risk to community safety and
13 conditions imposed by the court. The secretary shall adopt rules to
14 implement the provisions of this subsection.

15 (7) By the close of the next business day after receiving notice of
16 a condition imposed or modified by the department, an offender may
17 request an administrative review under rules adopted by the department.
18 The condition shall remain in effect unless the reviewing officer finds
19 that it is not reasonably related to any of the following: (a) The
20 crime of conviction; (b) the offender's risk of reoffending; or (c) the
21 safety of the community.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
23 to read as follows:

24 Local governments, their subdivisions and employees, the department
25 of corrections and its employees, and the Washington association of
26 sheriffs and police chiefs and its employees are immune from civil
27 liability for damages arising from incidents involving offenders who
28 are placed on electronic monitoring, unless it is shown that an
29 employee acted with gross negligence or bad faith.

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