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**SUBSTITUTE SENATE BILL 5166**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Kline, Hewitt, Regala, Zarelli, Brandland, Roach, Carrell, McCaslin and Shin)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to electronic monitoring as an alternative to  
2 incarceration; amending RCW 9.94A.737; creating new sections; and  
3 providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature believes that electronic  
6 monitoring, as an alternative to incarceration, is a proper and cost-  
7 effective method of punishment and supervision for many criminal  
8 offenders. The legislature further finds that advancements in  
9 electronic monitoring technology have made the technology more common  
10 and acceptable to criminal justice system personnel, policymakers, and  
11 the general public.

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

16 The intent of this act is to determine what electronic monitoring  
17 policies and programs have been implemented in the other forty-nine  
18 states, in order that Washington state can learn from the other states'  
19 experiences.

1        NEW SECTION.    **Sec. 2.**    (1) The Washington association of sheriffs  
2 and police chiefs shall conduct a comprehensive study on electronic  
3 monitoring in every state.    The study shall review and analyze each  
4 state's activity regarding electronic monitoring.    Specifically, the  
5 study shall include:

6            (a) How often electronic monitoring is used;

7            (b) A description of laws and circumstances of when an offender is  
8 placed on electronic monitoring;

9            (c) The discovery and analysis of specific programs used to promote  
10 electronic monitoring and how they are operated;

11           (d) The type of electronic monitoring technology used;

12           (e) Evaluation of offender pay programs and the amount of money  
13 recovered from these programs;

14           (f) Overall perceptions of electronic monitoring from the criminal  
15 justice community, and any real or perceived problems or concerns with  
16 electronic monitoring;

17           (g) Estimates on savings realized by utilizing electronic  
18 monitoring.

19        (2) The findings and any recommendations from the study shall be  
20 placed into a final report and presented to the legislature no later  
21 than December 31, 2005.

22        **Sec. 3.**    RCW 9.94A.737 and 2002 c 175 s 15 are each amended to read  
23 as follows:

24        (1) If an offender violates any condition or requirement of  
25 community custody, the department may transfer the offender to a more  
26 restrictive confinement status to serve up to the remaining portion of  
27 the sentence, less credit for any period actually spent in community  
28 custody or in detention awaiting disposition of an alleged violation  
29 and subject to the limitations of subsection (2) of this section.

30        (2)(a) For a sex offender sentenced to a term of community custody  
31 under RCW 9.94A.670 who violates any condition of community custody,  
32 the department may impose a sanction of up to sixty days' confinement  
33 in a local correctional facility for each violation.    If the department  
34 imposes a sanction, the department shall submit within seventy-two  
35 hours a report to the court and the prosecuting attorney outlining the  
36 violation or violations and the sanctions imposed.

1 (b) For a sex offender sentenced to a term of community custody  
2 under RCW 9.94A.710 who violates any condition of community custody  
3 after having completed his or her maximum term of total confinement,  
4 including time served on community custody in lieu of earned release,  
5 the department may impose a sanction of up to sixty days in a local  
6 correctional facility for each violation.

7 (c) For an offender sentenced to a term of community custody under  
8 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,  
9 for a crime committed on or after July 1, 2000, who violates any  
10 condition of community custody after having completed his or her  
11 maximum term of total confinement, including time served on community  
12 custody in lieu of earned release, the department may impose a sanction  
13 of up to sixty days in total confinement for each violation. The  
14 department may impose sanctions such as work release, home detention  
15 with electronic monitoring, work crew, community restitution, inpatient  
16 treatment, daily reporting, curfew, educational or counseling sessions,  
17 supervision enhanced through electronic monitoring, or any other  
18 sanctions available in the community.

19 (d) For an offender sentenced to a term of community placement  
20 under RCW 9.94A.705 who violates any condition of community placement  
21 after having completed his or her maximum term of total confinement,  
22 including time served on community custody in lieu of earned release,  
23 the department may impose a sanction of up to sixty days in total  
24 confinement for each violation. The department may impose sanctions  
25 such as work release, home detention with electronic monitoring, work  
26 crew, community restitution, inpatient treatment, daily reporting,  
27 curfew, educational or counseling sessions, supervision enhanced  
28 through electronic monitoring, or any other sanctions available in the  
29 community.

30 (3) If an offender is accused of violating any condition or  
31 requirement of community custody, he or she is entitled to a hearing  
32 before the department prior to the imposition of sanctions. The  
33 hearing shall be considered as offender disciplinary proceedings and  
34 shall not be subject to chapter 34.05 RCW. The department shall  
35 develop hearing procedures and a structure of graduated sanctions.

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

1 (a) Hearing officers shall report through a chain of command  
2 separate from that of community corrections officers;

3 (b) The department shall provide the offender with written notice  
4 of the violation, the evidence relied upon, and the reasons the  
5 particular sanction was imposed. The notice shall include a statement  
6 of the rights specified in this subsection, and the offender's right to  
7 file a personal restraint petition under court rules after the final  
8 decision of the department;

9 (c) The hearing shall be held unless waived by the offender, and  
10 shall be electronically recorded. For offenders not in total  
11 confinement, the hearing shall be held within fifteen working days, but  
12 not less than twenty-four hours, after notice of the violation. For  
13 offenders in total confinement, the hearing shall be held within five  
14 working days, but not less than twenty-four hours, after notice of the  
15 violation;

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

22 (e) The sanction shall take effect if affirmed by the hearing  
23 officer. Within seven days after the hearing officer's decision, the  
24 offender may appeal the decision to a panel of three reviewing officers  
25 designated by the secretary or by the secretary's designee. The  
26 sanction shall be reversed or modified if a majority of the panel finds  
27 that the sanction was not reasonably related to any of the following:  
28 (i) The crime of conviction; (ii) the violation committed; (iii) the  
29 offender's risk of reoffending; or (iv) the safety of the community.

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

32 (6) The department shall work with the Washington association of  
33 sheriffs and police chiefs to establish and operate an electronic  
34 monitoring program for low-risk offenders who violate the terms of  
35 their community custody. Between January 1, 2006, and December 31,  
36 2006, the department shall endeavor to place at least one hundred low-  
37 risk community custody violators on the electronic monitoring program

1 per day if there are at least that many low-risk offenders who qualify  
2 for the electronic monitoring program.

3 (7) Local governments, their subdivisions and employees, the  
4 department and its employees, and the Washington association of  
5 sheriffs and police chiefs and its employees shall be immune from civil  
6 liability for damages arising from incidents involving low-risk  
7 offenders who are placed on electronic monitoring unless it is shown  
8 that an employee acted with gross negligence or bad faith.

9 NEW SECTION. Sec. 4. This act expires December 31, 2006.

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