

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1136

Chapter 435, Laws of 2005

(partial veto)

59th Legislature
2005 Regular Session

ELECTRONIC MONITORING

EFFECTIVE DATE: 7/24/05

Passed by the House April 18, 2005
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2005
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 13, 2005, with the
exception of Section 4, which is vetoed.

CHRISTINE GREGOIRE

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 **HOUSE BILL 1136** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 13, 2005 - 2:21 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1136

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington **59th Legislature** **2005 Regular Session**

By Representatives O'Brien, Darneille, Kirby, Miloscia, Lovick and Chase

Read first time 01/17/2005. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to studying electronic monitoring as an alternative
2 to 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, 2005.***

**Sec. 4 was vetoed. See message at end of chapter.*

10 NEW SECTION. Sec. 5. If specific funding for the purposes of
11 section 2 of this act, referencing this act and section 2 of this act
12 by bill or chapter number and section number, is not provided by June
13 30, 2005, in the omnibus appropriations act, section 2 of this act is
14 null and void.

Passed by the House April 18, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor May 13, 2005, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 13, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 4, House Bill No.
1136 entitled:

"AN ACT Relating to studying electronic monitoring as an alternative
to incarceration."

Section 3 of the bill requires the Department of Corrections to
operate an electronic monitoring program beginning on January 1,
2006. In its entirety, Section 4 states: "This act expires December
31, 2005." Section 4 was apparently left in the bill inadvertently
after Section 3 was added. Section 3 cannot be effective if Section
4 remains in the bill.

For these reasons, I have vetoed Section 4 of House Bill No. 1136.

With the exception of Section 4, House Bill No. 1136 is approved."