
HOUSE BILL 2434

State of Washington

66th Legislature

2020 Regular Session

By Representative Klippert

Read first time 01/14/20. Referred to Committee on Public Safety.

1 AN ACT Relating to sanctions for violating community custody
2 conditions; and amending RCW 9.94A.737.

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

4 **Sec. 1.** RCW 9.94A.737 and 2012 1st sp.s. c 6 s 7 are each
5 amended to read as follows:

6 (1) If an offender is accused of violating any condition or
7 requirement of community custody, the department shall address the
8 violation behavior. The department may hold offender disciplinary
9 proceedings not subject to chapter 34.05 RCW. The department shall
10 notify the offender in writing of the violation process.

11 (2)(a) The offender's violation behavior shall determine the
12 sanction the department imposes. The department shall adopt rules
13 creating a structured violation process that includes presumptive
14 sanctions, aggravating and mitigating factors, and definitions for
15 low level violations and high level violations.

16 (b) After an offender has committed and been sanctioned for five
17 low level violations, (~~all~~) subsequent violations committed by that
18 offender (~~shall automatically~~) may be considered high level
19 violations.

20 (c)(i) The department must define aggravating factors that
21 indicate the offender may present a current and ongoing foreseeable

1 risk and which therefore(~~r~~) elevate an offender's behavior to a
2 high level violation process.

3 (ii) The state and its officers, agents, and employees may not be
4 held criminally or civilly liable for a decision to elevate or not to
5 elevate an offender's behavior to a high level violation process
6 under this subsection unless the state or its officers, agents, and
7 employees acted with reckless disregard.

8 (3) The department may intervene when an offender commits a low
9 level violation as follows:

10 (a) For a first low level violation, the department may sanction
11 the offender to one or more nonconfinement sanctions.

12 (b) For a second or subsequent low level violation, the
13 department may sanction the offender to not more than three days in
14 total confinement.

15 (i) The department shall develop rules to ensure that each
16 offender subject to a short-term confinement sanction is provided the
17 opportunity to respond to the alleged violation prior to imposition
18 of total confinement.

19 (ii) The offender may appeal the short-term confinement sanction
20 to a panel of three reviewing officers designated by the secretary or
21 by the secretary's designee. The offender's appeal must be in writing
22 and hand-delivered to department staff, or postmarked, within seven
23 days after the sanction is imposed.

24 (4) If an offender is accused of committing a high level
25 violation, the department may sanction the offender to not more than
26 thirty days in total confinement per hearing.

27 (a) The offender is entitled to a hearing prior to the imposition
28 of sanctions; and

29 (b) The offender may be held in total confinement pending a
30 sanction hearing. Prehearing time served must be credited to the
31 offender's sanction time.

32 (5) If the offender's underlying offense is one of the following
33 felonies and the violation behavior constitutes a new misdemeanor,
34 gross misdemeanor, or felony, the offender shall be held in total
35 confinement pending a sanction hearing, and until the sanction
36 expires or until if a prosecuting attorney files new charges against
37 the offender, whichever occurs first:

38 (a) Assault in the first degree, as defined in RCW 9A.36.011;

39 (b) Assault of a child in the first degree, as defined in RCW
40 9A.36.120;

1 (c) Assault of a child in the second degree, as defined in RCW
2 9A.36.130;

3 (d) Burglary in the first degree, as defined in RCW 9A.52.020;

4 (e) Child molestation in the first degree, as defined in RCW
5 9A.44.083;

6 (f) Commercial sexual abuse of a minor, as defined in RCW
7 9.68A.100;

8 (g) Dealing in depictions of a minor engaged in sexually explicit
9 conduct, as defined in RCW 9.68A.050;

10 (h) Homicide by abuse, as defined in RCW 9A.32.055;

11 (i) Indecent liberties with forcible compulsion, as defined in
12 RCW 9A.44.100(1)(a);

13 (j) Indecent liberties with a person capable of consent, as
14 defined in RCW 9A.44.100(1)(b);

15 (k) Kidnapping in the first degree, as defined in RCW 9A.40.020;

16 (l) Murder in the first degree, as defined in RCW 9A.32.030;

17 (m) Murder in the second degree, as defined in RCW 9A.32.050;

18 (n) Promoting commercial sexual abuse of a minor, as defined in
19 RCW 9.68A.101;

20 (o) Rape in the first degree, as defined in RCW 9A.44.040;

21 (p) Rape in the second degree, as defined in RCW 9A.44.050;

22 (q) Rape of a child in the first degree, as defined in RCW
23 9A.44.073;

24 (r) Rape of a child in the second degree, as defined in RCW
25 9A.44.076;

26 (s) Robbery in the first degree, as defined in RCW 9A.56.200;

27 (t) Sexual exploitation of a minor, as defined in RCW 9.68A.040;

28 or

29 (u) Vehicular homicide while under the influence of intoxicating
30 liquor or any drug, as defined in RCW 46.61.520(1)(a).

31 (6) The department shall adopt rules creating hearing procedures
32 for high level violations. The hearings are offender disciplinary
33 proceedings and are not subject to chapter 34.05 RCW. The procedures
34 shall include the following:

35 (a) The department shall provide the offender with written notice
36 of the alleged violation and the evidence supporting it. The notice
37 must include a statement of the rights specified in this subsection,
38 and the offender's right to file a personal restraint petition under
39 court rules after the final decision;

1 (b) Unless the offender waives the right to a hearing, the
2 department shall hold a hearing, and shall record it electronically.
3 For offenders not in total confinement, the department shall hold a
4 hearing within fifteen business days, but not less than twenty-four
5 hours, after written notice of the alleged violation. For offenders
6 in total confinement, the department shall hold a hearing within five
7 business days, but not less than twenty-four hours, after written
8 notice of the alleged violation;

9 (c) The offender shall have the right to: (i) Be present at the
10 hearing; (ii) have the assistance of a person qualified to assist the
11 offender in the hearing, appointed by the hearing officer if the
12 offender has a language or communications barrier; (iii) testify or
13 remain silent; (iv) call witnesses and present documentary evidence;
14 (v) question witnesses who appear and testify; and (vi) receive a
15 written summary of the reasons for the hearing officer's decision;
16 and

17 (d) The sanction shall take effect if affirmed by the hearing
18 officer. The offender may appeal the sanction to a panel of three
19 reviewing officers designated by the secretary or by the secretary's
20 designee. The offender's appeal must be in writing and hand-delivered
21 to department staff, or postmarked, within seven days after the
22 sanction was imposed. The appeals panel shall affirm, reverse,
23 modify, vacate, or remand based on its findings. If a majority of the
24 panel finds that the sanction was not reasonably related to any of
25 the following: (i) The crime of conviction; (ii) the violation
26 committed; (iii) the offender's risk of reoffending; or (iv) the
27 safety of the community, then the panel will reverse, vacate, remand,
28 or modify the sanction.

29 (7) For purposes of this section, the hearings officer may not
30 rely on unconfirmed or unconfirmable allegations to find that the
31 offender violated a condition.

32 (8) Hearing officers shall report through a chain of command
33 separate from that of community corrections officers.

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