

HOUSE BILL REPORT

ESHB 1792

As Amended by the Senate

Title: An act relating to establishing search and arrest authority provisions of offenders by department of corrections personnel.

Brief Description: Establishing search and arrest authority provisions of offenders by department of corrections personnel.

Sponsors: House Committee on Human Services (originally sponsored by Representatives Dickerson, O'Brien, Hurst, Morrell, Orwall, Green, Dammeier, Klippert, Walsh, Kelley and Ormsby; by request of Department of Corrections).

Brief History:

Committee Activity:

Human Services: 2/9/09, 2/18/09 [DPS].

Floor Activity:

Passed House: 3/5/09, 97-0.

Senate Amended.

Passed Senate: 4/15/09, 43-0.

Brief Summary of Engrossed Substitute Bill

- Authorizes the Department of Corrections (DOC) staff to require an offender under the supervision of a community corrections officer (CCO) to submit to pat searches or other limited security searches without reasonable cause when the offender is on or preparing to enter the DOC's premises, grounds, facilities, or in its vehicles.
- Requires that pat searches shall be conducted by staff who is the same gender as the offender, except in cases of emergency.
- Authorizes the DOC hearing officers, in addition to the court, to make determinations regarding whether an offender's arrest for a violation of a probation condition was appropriate.
- Requires the CCO to report circumstances and facts of arrest of offender, with recommendations, to a court or a DOC hearing officer.
- Authorizes a DOC staff member, in addition to a court, to approve release of an offender from detention on bail or personal recognizance after arrest by a CCO.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

Staff: Linda Merelle (786-7092)

Background:

Searches of an Offender Under Supervision.

Searches without a warrant are generally unreasonable *per se* unless it is demonstrated that public interest justifies creation of an exception to the general warrant requirement. An offender who is under the supervision of the Department of Corrections (DOC) has a diminished right to privacy. Under the Fourth Amendment of the United States Constitution and Article 1, Section 7 of the Washington State Constitution, a community corrections officer (CCO) may search an offender's person, automobile, residence, or personal property without obtaining a warrant if the community corrections officer has reasonable cause to believe that the offender has violated a condition of his or her release. Reasonable cause must be based upon a well-founded suspicion that a probation violation has occurred.

A well-founded suspicion is analogous to the cause requirement of a *Terry* stop (contact with a police officer) in that it must be based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a search. A reasonable suspicion requires only sufficient probability, not absolute certainty. A well founded suspicion is a lesser standard of proof than probable cause.

Arrest of Offender Under Supervision.

If an offender violates any condition or requirement of a sentence, the CCO may arrest the offender without a warrant pending a determination by the court.

The CCO may arrest the offender for a crime committed in his or her presence, and the CCO must report the facts and circumstances of the conduct of the offender with recommendations to the court. If the CCO arrests or causes the arrest of an offender, the offender shall be detained in the county jail of the county in which the offender was taken into custody and the offender shall not be released on bail or personal recognizance except through approval of the court.

Summary of Engrossed Substitute Bill:

For the safety and security of the DOC staff, CCOs would have the authority to conduct pat-down searches or other limited security searches without reasonable cause, when an offender is present on or while preparing to enter the premises, grounds, facilities, or vehicles of the DOC. Pat-down searches shall only be conducted by like-gendered staff except in emergency situations. If the offender commits a crime in the presence of the CCO, the CCO may report the offense to either the court or the DOC hearing officer.

If an offender violates any condition or requirement of a sentence, the CCO may arrest (or cause the arrest of) the offender without a warrant, pending a determination by a court or a DOC hearing officer. The CCO may arrest an offender for an offense committed in his or her presence. The CCO would be required to report the circumstances of the arrest, with recommendations, to the court or to a DOC hearing officer.

Upon the detention of an offender whom the CCO has arrested or caused the arrest, authorized staff of the DOC, in addition to the court, have the authority to approve a release of the offender on bail or personal recognizance.

EFFECT OF SENATE AMENDMENT(S):

Removes the provision that an offender may be required to submit to pat searches, without reasonable cause, when "at or preparing to enter department vehicles;" provides that an offender may be searched without reasonable cause when in or on department premises, grounds, or facilities, or while preparing to enter the premises, grounds, facilities, or vehicles.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The passage of this bill would enhance the safety of CCOs. There are family and staff located at the offices. The ability to conduct a pat-down search would give an opportunity to enhance the safety of the staff. It is also important to create a safe environment for offenders for rehabilitation. The DOC supervises assaultive and dangerous offenders. This bill would allow the DOC to put up a sign that says by law, an offender is subject to a pat-down search, just like going into a court house.

(Opposed) None.

Persons Testifying: Karen Daniels, Department of Corrections; and Ton Johnson, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.