
Human Services Committee

ESSB 5288

Brief Description: Changing provisions regarding supervision of offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala and Shin).

Brief Summary of Engrossed Substitute Bill

- Revises the scheme under which the Department of Corrections (DOC) supervises offenders.
- Requires the DOC to assess the risk of an offender by using a "static" risk assessment tool developed by the Washington State Institute for Public Policy.
- Allows the DOC to terminate supervision after six months for a moderate or low risk offender if, at that time, the offender is still assessed as moderate or low risk.
- Permits superior courts to impose conditions of probation and county supervision for offenders convicted of misdemeanor and gross misdemeanor offenses if the county where the offender is sentenced has authorized a misdemeanor probation program.
- Applies the new scheme of supervision retroactively and prospectively.
- Repeals RCW 9.95.206, 9.95.212, and 2008 c 231 s 60 (uncodified).

Hearing Date: 3/4/09

Staff: Linda Merelle (786-7092)

Background:

Offender Accountability Act.

In 1999 the Legislature passed the Offender Accountability Act (Engrossed Second Substitute Senate Bill 5421). The Offender Accountability Act (OAA) extended community custody to all sex offenses, all crimes against persons, and all felony drug offenses. It required the Department

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of Corrections (DOC) to use a validated risk assessment and to supervise offenders according to their risk level. In 2003 the Legislature restricted the types of offenders that the DOC could supervise and increased the earned release time for certain offenders from one-third to 50 percent of their sentences.

Risk Assessment.

One purpose of the OAA is to reduce the risk of reoffense in the community. Under the OAA, the DOC is required to classify and supervise offenders according to their risk for future offending. As a part of the OAA, the Washington State Institute for Public Policy (WSIPP) was directed to study the impact of the OAA on recidivism. In 2003 the WSIPP analyzed the validity of the DOC's risk assessment tool, the Level of Service Inventory—Revised (LSI-R). The LSI-R is a 54 question survey which includes "static" and "dynamic" risk factors. A static risk factor is a factor that cannot decrease, such as an offender's criminal history. A "dynamic" risk factor can decrease through intervention, such as an offender's drug dependency. In its analysis of the LSI-R, the WSIPP determined how the predictive accuracy of the LSI-R could be strengthened by including more static risk information about an offender's prior record of offenses. The WSIPP developed a new tool for risk assessment which would have increased accuracy for predicting reoffense.

In approximately August 2008, the DOC began using the new static risk assessment tool to assign a probability of a subsequent conviction based upon the criminal history, age, and gender of Washington state offenders. Instead of the risk categories of the LSI-R (A, B, C, and D, with A being the highest risk), the new tool identified the risk categories of: (1) high risk/violent; (2) high risk/non-violent; (3) moderate risk; and (4) low risk.

Currently, the DOC must supervise any offender who has been sentenced to community custody and every person sentenced by a superior court to probation for a misdemeanor or gross misdemeanor if (1) the risk assessment tool places the offender in one of the two highest risk categories or (2) if the offender meets one of the following conviction criteria:

<i>Current Offense</i>	<i>Prior Conviction</i>	<i>Special Sentencing Conditions or Status</i>
Sex Offense	Sex Offense	Condition of offender's supervision includes chemical dependency treatment, including the Drug Offender Sentencing Alternative (DOSA)
Violent Offense	Violent Offense	Offender was sentenced pursuant to a First Time Offender Waiver (FTOW)
Crime against persons (does not include Assault 4th Degree)	Crime against persons (does not include Assault 4th Degree)	Offender was sentenced to a Special Sex Offender Sentencing Alternative (SSOSA)

Residential Burglary	Residential Burglary	Supervision is required by the Interstate Compact for Adult Offender Supervision.
Manufacture, delivery, or possession of methamphetamine	Manufacture, delivery, or possession of methamphetamine	
Delivery of a controlled substance to a minor	Delivery of a controlled substance to a minor	

The DOC is prohibited from supervising any offender who does not fall within one of the above categories.

Summary of Bill:

The DOC must supervise all offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) and offenders who meet other criteria as described below:

<i>High Risk</i>	<i>Regardless of Risk Assessment</i>	<i>Low or Moderate Risk to Reoffend</i>
	Sex offenders, except those sentenced to community custody only for failure to register as a sex offender	Have a conviction for a violent offense or crime against persons
All offenders regardless of offense	All dangerous mentally ill offenders	Offenders required to complete chemical dependency treatment as a condition of community custody
	All offenders with an indeterminate sentence.	
	All offenders sentenced to DOSA, SSOSA and FTOW	
	All offenders required to be supervised under the Interstate Compact	

Supervision will be terminated if an offender originally assessed as a low or moderate risk is still assessed at a low or moderate risk to reoffend after six months.

Misdemeanor and Gross Misdemeanor Offenses.

In the scheme of supervision under this bill, offenders who are convicted of misdemeanor or gross misdemeanor offenses, including domestic violence offenses, and sentenced in superior court will not be supervised by the DOC.

Under this bill, a county legislative authority may authorize a probation program for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and who may be sentenced to probation by a superior court. If authorized by the county, a superior court may sentence an offender convicted of a misdemeanor or gross misdemeanor to probation. Neither Washington state nor the county are liable for any harm caused by the actions of an offender sentenced by the superior court to misdemeanor probation but who is not being supervised pursuant to a duly authorized superior court misdemeanor probation program. Washington state, the relevant county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any act or omission in rendering probation services unless the act or omission constitutes gross negligence.

Retroactive Application.

This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the DOC, currently incarcerated, or sentenced after the effective date of the act.

Repealed Statutes.

Under this bill, 9.95.206 RCW, 9.95.212 RCW, and 2008 c 231 (uncodified) are repealed.

Emergency Clause.

Sections 1, 4-8, 10, 11, and 14 are subject to an emergency clause.

Expiration Dates.

Section 1 of the act expires on August 1, 2009.

Appropriation: None.

Fiscal Note: Requested on March 2, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 4-8, 10, 11, and 14, relating to categories of offenders for Department of Corrections supervision, supervision of misdemeanants, and retroactivity, which contain an emergency clause and take effect immediately; and sections 2, 3, and 9, relating to categories of offenders for Department of Corrections supervision, risk assessment, and the expiration of provisions passed in 2003, which take effect August 1, 2009.