

HOUSE BILL REPORT

SSB 6550

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

Brief Description: Imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Regala, Carrell, Marr, Shin and Roach; by request of Department of Corrections).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/17/10, 2/23/10 [DP].

Brief Summary of Substitute Bill

- Requires an offender to serve a mandatory minimum term in total confinement (of up to one year) for a violation of community custody against an employee of a law enforcement agency.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Kirby and Ross.

Minority Report: Do not pass. Signed by 2 members: Representatives Appleton and Goodman.

Staff: Yvonne Walker (786-7841).

Background:

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.

"Community custody" means that portion of an offender's sentence of confinement, served in the community subject to controls placed on the offender's movement and activities by the Department of Corrections (DOC). The DOC must supervise all felony offenders sentenced to community custody that are classified as high risk to offend and certain other felony offenders. The DOC must supervise all sex offenders, including those whose sole offense is failure to register, regardless of risk. The DOC must also supervise offenders classified as: (1) dangerous mentally ill offenders; (2) those with indeterminate sentences; (3) those required to be supervised under the Interstate Compact for Adult Offender Supervision; and (4) offenders sentenced to special sentencing alternatives.

While on community custody, offenders are subject to a variety of conditions. For example, unless waived by the court, the terms of an offender's community custody must include:

- reporting to a community corrections officer;
- working at DOC-approved education, employment, or community restitution;
- refraining from possessing or consuming controlled substances;
- paying supervision fees; and
- obtaining prior DOC approval for residence location and living arrangements.

In addition, the court may impose a variety of conditions of community custody, including:

- remaining within, or outside of, specified geographical boundaries;
- refraining from contacting the victim or a specified class of individuals;
- participating in counseling;
- refraining from consuming alcohol; or
- complying with crime-related conditions.

The DOC is also authorized to impose conditions of community custody, such as electronic monitoring, as long as they do not conflict with any court-ordered conditions.

If the offender violates the conditions of community custody, the offender may be required to serve up to 60 days of confinement for each violation. In lieu of confinement, an offender may be sanctioned with work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; or any other sanctions available in the community.

An offender accused of violating a condition of community custody is entitled to a hearing before the DOC before sanctions are imposed. The hearing is considered a disciplinary hearing and is not subject to the requirements of the Administrative Procedure Act. For offenders not in total confinement, the hearing must be held within 15 days but no less than 24 hours after notice of violation.

Summary of Bill:

A mandatory minimum term of imprisonment is established for a violation of community custody against an employee of a law enforcement agency.

An offender must be sanctioned with up to one year in total confinement if he or she violates community custody by assaulting a law enforcement officer, an employee of a law enforcement agency, or an employee of the DOC who was performing his or her official duties at the time of the assault. The sanction must be served consecutively to any other sanction for any other violation. Under no circumstances may the sanction or period of supervision exceed the maximum sentence allowed.

Law enforcement officer is defined.

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) This version of the bill is somewhat different than the original bill as presented. The Senate amended the bill to say up to one-year of incarceration can be imposed. This was a recommendation from the Sentencing Guidelines Commission which had concerns about making sure the sentence was not pushed out too far without the due process. This version of the bill gives the DOC more discretion and also drove the fiscal note. This bill came from the Clemmons Review Panel that the Governor put together. If this bill had been in place a year ago, the Lakewood tragedy may have been averted because at the time the DOC was restricted to only imposing a 60-day penalty. This bill would have allowed the DOC to have kept Maurice Clemmons up to one year in incarceration and would have given the DOC time to work out issues with the State of Arkansas.

This is an appropriate tool for the DOC to have to manage offender behavior in the community when an offender assaults a law enforcement officer or DOC employees. Because of the change of "up to" 365 days, this reduces the fiscal note.

(Opposed) There are still concerns about the fiscal note. The amendment to the bill does not materially change the potential cost of the bill. By giving the DOC authority to impose a sentence of up to a year, it means they can put people in custody for 365 days. This is no different from saying that they are required to hold people for that same amount of time. The intent of this legislation is for the DOC to hold people longer. This is going to be more expensive during a time when we can least afford it.

The bill as drafted could result in state and federal litigation. If successful, a portion of the Offender Accountability Act could be overturned that gives the DOC the authority to sanction inmates. Because the current penalties are not long, due process has not been an issue. However, what we are coming to is punishment that is so substantial that the courts view of this may change. The litigation will have a fiscal impact and the DOC may be forced to change their process for punishing offenders.

Judges already have the tools to protect officers in the community. Increasing penalties under this bill is not really needed as the crime of Assault of an officer is already a crime under current law and an aggravating circumstance can also be charged. This bill is an expensive sanction that is unnecessary and not a good use of our public safety dollars.

Persons Testifying: (In support) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Dianne Ashlock, Department of Corrections.

(Opposed) Kimberly Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.