

# SENATE BILL REPORT

## ESSB 5288

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As Amended by House, April 21, 2009

**Title:** An act relating to the supervision of offenders.

**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 History:**

**Committee Activity:** Human Services & Corrections: 1/20/09, 1/23/09 [DPS, w/oRec].

Passed Senate: 2/13/09, 38-8.

Passed House: 4/21/09, 51-45.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5288 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Kauffman and McAuliffe.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Carrell.

**Staff:** Shani Bauer (786-7468)

**Background:** When the Sentencing Reform Act was passed by the Legislature in 1984, it contained very limited provisions for the supervision of offenders. Over time, the Legislature added back supervision in varying lengths of time and for varying offenses.

In 1999 the Legislature passed the Offender Accountability Act (OAA). The OAA extended community custody to all sex offenses, all violent offenses, all crimes against persons, and all felony drug offenses. It also required the Department of Corrections (DOC) to utilize a validated risk assessment and supervise offenders according to their risk level. In 2003 due to tough budget circumstances, the Legislature restricted the types of offenders that DOC could supervise and increased earned early release for certain offenders from one-third to 50 percent of their sentence. The supervision scheme has largely remained the same since the 2003 changes.

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*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.*

Currently DOC must supervise any offender who has been sentenced to community custody and every misdemeanor or gross misdemeanor probationer ordered by the superior court to probation if:

- a risk assessment places the offender in one of the two highest risk categories; or
- regardless of the offender's risk category:
  - the offender or probationer has a conviction for:
    - a sex offense;
    - a violent offense;
    - a crime against persons;
    - a felony that is domestic violence;
    - residential burglary;
    - the manufacture, delivery, or possession of methamphetamine; or
    - delivery of a controlled substance to a minor;
  - the offender has a prior conviction for any of the above listed offenses;
  - the conditions of the offender's supervision include chemical dependency treatment;
  - the offender was sentenced to a First Time Offender Waiver (FTOW) or Special Sex Offender Sentencing Alternative (SSOSA); or
  - supervision is required by the Interstate Compact for Adult Offender Supervision.

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

DOC has utilized a validated risk instrument, the Level of Service Inventory (LSI-R), to place the offender in one of four risk categories designated as Level A, B, C, and D. Last year, the Washington State Institute for Public Policy (WSIPP) developed an improved risk assessment tool for DOC that will classify offenders as High Risk Violent, High Risk Nonviolent (property and drug), Moderate Risk, and Low Risk. DOC is in the process of implementing this new tool with its current caseload

**Summary of Engrossed Substitute Bill:** DOC must supervise the following offenders sentenced to community custody:

- offenders who are classified at a high risk to reoffend;
- all sex offenders except those who are sentenced to community custody only for a failure to register;
- all dangerously mentally ill offenders ;
- all offenders with an indeterminate sentence;
- all offenders sentenced to DOSA, SSOSA and FTOW (First Time Offender Waiver);
- all offenders required to be supervised under the Interstate Compact;
- offenders who are at a low or moderate risk to reoffend and:
  - have a conviction for a violent offense or a crime against persons; or
  - are required to complete chemical dependency treatment as a condition of community custody.
  - supervision will be terminated after six months if the offender is still at a low or moderate risk to reoffend.

DOC must assess an offender's risk utilizing the risk assessment tool recommended by WSIPP.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** OTHER: We understand that there is a need to find savings in the state budget and, therefore, cut back in those areas that have the least impact to community safety. We support in principle what has been proposed and agree that current supervision isn't all that effective for these low risk populations. Generally, this supervision doesn't detect crime and doesn't increase community safety. We would like the opportunity to have some input on those low risk offenders that are added back to supervision. Supervision for sex offenders should not be tied to their risk level in the community. It would also be helpful to clarify that the Drug Offender Sentencing Alternative offenders will get supervision. The ISRB should determine whether indeterminate offenders and determinate plus offenders are supervised.

CON: There are serious concerns with the new assessment tool. The tool has only been in use for six months and there was a problem identified where all offenders had to be reassessed. The tool has had no actual field validation. More offenders are coming out as moderate or low risk than previously were in the C and D level risk categories. We would also like to see more supervision for domestic violence offenders. This is a truth in sentencing issue. Offenders are sentenced with community custody, but many will not be supervised.

**Persons Testifying:** OTHER: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Jeri Costa, ISRB.

CON: Ginger Richardson, Washington Federation of State Employees.

#### **House Amendment(s):**

- Supervision is removed for low and moderate risk offenders (except for those categories for whom supervision is required regardless of risk e.g. sex offenders, DMIO, ISRB offenders, etc.).
- Supervision is added back for sex offenders on supervision only for a failure to register and for two groups of misdemeanants: (1) misdemeanor sex offenders, including those convicted of a failure to register; and (2) misdemeanor domestic violence offenders who have a prior conviction.
- DOC is given the authority to arrest and pursue administrative sanctions for misdemeanants who are under DOC supervision, the same as for felony offenders on community custody. Terms of community custody are changed from ranges established by the Sentencing Guidelines Commission (SGC) to periods fixed by statute as follows:

- 36 months for sex offenders, serious violent offenders, and sex offenders convicted of a felony failure to register;
  - 18 months for violent offenders that did not commit a serious violent offense;
  - 12 months for offenders convicted of a crime against person, drug offense, or offense involving unlawful possession of a firearm by a gang member; and
  - community custody terms are unchanged for DOSA, SSOSA, and FTOW sentences.
- The SGC must include in its biennial report to the Legislature, due December 1, 2011, an analysis of the impact of the provisions of the bill on recidivism.