
**Public Safety & Emergency Preparedness
Committee**

HB 1209

Brief Description: Improving the resources and tools community corrections officers and law enforcement need to perform their duties protecting the public.

Sponsors: Representatives Pearson, Ross, Armstrong, Klippert, Schmick, Warnick, Johnson, Haler, Smith and Kristiansen.

Brief Summary of Bill

- Requires offenders to submit to random, unannounced inspections of his or her person, residence, automobile, or personal property as a condition of community custody.
- Authorizes community corrections officers (CCOs) to inspect the person, residence, automobile, or other personal property of an offender under its supervision in the community whenever the CCO has reasonable cause to believe that the offender has violated a condition of his or her sentence.
- Authorizes CCOs to perform random, unannounced inspections of the person, residence, automobile, or other personal property of every offender under the supervision of the Department of Corrections (DOC) pursuant to a term of community custody. Requires the CCO to document his or her rationale for conducting such inspections.
- Provides immunity for CCOs for civil damages arising from an act or omission pursuant to his or her assistance to law enforcement, at the request of law enforcement, unless the act or omission constitutes gross negligence.
- Provides immunity for CCOs for civil damages arising from an act or omission resulting from the CCO's interaction with a third party attempting to intervene during the CCO's contact with an offender under his or her supervision.
- Requires a DOC hearing officer to give due consideration to the CCO's recommendation regarding the sanction for an offender who has violated a condition of community custody.

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.

- Requires the DOC to develop a plan, using the existing staffing matrix, to reduce the supervision caseload of CCOs by December 1, 2012, and to increase partnerships, such as the Neighborhood Corrections Initiative.
- Requires the DOC to hire additional CCOs to the extent that funding is provided in the operating budget.

Hearing Date: 1/25/11

Staff: Yvonne Walker (786-7841).

Background:

Searches of Offenders In and Out of Custody.

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.

A prisoner is not wholly stripped of constitutional protections when they are imprisoned for a crime, but many of a prisoner's rights and privileges are subject to limitation because institutional goals and policies take precedence. However, a prisoner has no reasonable expectation of privacy in his prison cell entitling him or her to the protection of the Fourth Amendment of the United States Constitution against unreasonable searches. For circumstances outside of a prison cell, the reasonableness of a search must be determined by balancing the need for the particular search against the invasion of the personal rights that the search entails. Under Washington law, routine pat-down searches of prisoners are permissible even where there is no articulable suspicion.

For offenders who are out of custody and under the supervision of the DOC, the Fourth Amendment of the United States Constitution and Article 1, Section 7 of the Washington State Constitution require that a community corrections officer (CCO) have reasonable cause or a well-founded suspicion that the offender has violated the conditions of his or her supervision before conducting a warrantless search. If the CCO has a reasonable or well-founded suspicion, he or she may search an offender's person, automobile, residence, or personal property without obtaining a warrant. 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 Community Custody Supervision.

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. A CCO may also arrest an offender for an offense committed in his or her

presence. The CCO must report the circumstances of the arrest, with recommendations, to the court or to a DOC hearing officer.

For the safety and security of the DOC staff, the CCOs have 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 may only be conducted by like-gendered staff except in emergency situations.

If the CCO arrests or causes the arrest of an offender, the offender is detained in the county jail of the county in which the offender was taken into custody and the offender may not be released on bail or personal recognizance except through approval of the court or authorized DOC staff.

Summary of Bill:

Search as Condition of Sentence.

As a condition to community custody, the court must require an offender to submit to random, unannounced inspections of his or her person, residence, automobile, or personal property as a condition of community custody.

Search Pursuant to Reasonable Cause of Violation of Condition of Supervision.

A CCO may inspect the person, residence, automobile, or other personal property of an offender, including escapees and absconders, under its supervision in the community whenever the CCO, based upon his or her professional judgment and discretion, has reasonable cause to believe that the offender has violated the condition of his or her supervision.

Unannounced Random Searches.

The CCO, based upon his or her professional judgment and discretion, may perform random, unannounced inspections of the person, residence, automobile, or other personal property of every offender, including escapees and absconders, who is under the supervision of the DOC for a crime committed on or after the effective date of the act. The CCO must document his or her rationale for conducting an inspection under this section.

Immunity for Community Corrections Officers.

A CCO may not be held liable for civil damages arising from an act or omission (unless the act or omission constitutes gross negligence) that occurs:

- when the CCO provides assistance to a law enforcement officer at the request of the law enforcement officer; or
- when the CCO interacts with a third party who is attempting to intervene when a CCO is contacting an offender under community custody or community supervision.

Sanctions.

The DOC hearing officers must give due consideration to a CCO's recommendations regarding sanctions for violations, and the hearing officer shall have the option based on the hearing officer's professional determination and discretion, to impose the maximum sanction or sanctions allowed regardless of the "response option range" or "violation response score" of the offender based upon measures developed by the DOC.

Reduction of Supervision Caseload.

The DOC must develop a plan, using the existing staffing matrix, to reduce the supervision caseload of CCOs by December 1, 2012, and increase partnerships, such as the Neighborhood Corrections Initiative. Prior to 2012, the DOC must hire additional CCOs to the extent funding is provided in the operating budget.

Appropriation: None.

Fiscal Note: Requested on January 19, 2011.

Effective Date: The bill takes effect on August 1, 2011. However, the bill is null and void unless funded in the budget.