

# HOUSE BILL REPORT

## ESHB 1547

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### As Passed Legislature

**Title:** An act relating to the deportation of criminal alien offenders.

**Brief Description:** Concerning the deportation of criminal alien offenders.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Darneille, Hunter, Dickerson, Cody, Hunt, Kagi, Sullivan and Kenney).

**Brief History:**

**Committee Activity:**

Ways & Means: 1/31/11, 2/17/11 [DPS].

**Floor Activity:**

Passed House: 3/2/11, 85-11.

Senate Amended.

Passed Senate: 4/5/11, 48-1.

House Refused to Concur.

Senate Amended.

Passed Senate: 4/21/11, 47-0.

House Concurred.

Passed House: 4/21/11, 56-41.

Passed Legislature.

#### Brief Summary of Engrossed Substitute Bill

- Removes the requirement that the Secretary of the Department of Corrections (Secretary) make a finding that a placement of an alien offender on conditional release status is in the best interests of the state.
- Removes the requirement of approval by the sentencing court and the prosecuting attorney in the county of conviction as a prerequisite to placing an alien offender on conditional release status.
- Requires the Secretary to enter into an agreement with the Federal Immigration and Customs Enforcement Agency (ICE) that once an alien offender has been turned over to the ICE and placed on conditional release status, that offender will remain in total confinement at a facility operated by the ICE pending the offender's return to his or her country of origin.

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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.*

- Exempts offenders serving a sentence for a violent offense or a sex offense from eligibility for conditional release.
- Requires the Department of Corrections to provide an offender who is subject to early release for deportation with a written notice of his or her rights in removal proceedings.
- Requires that prior to accepting a defendant's guilty plea, a state court advise the defendant that he or she may be subject to early release for removal as a consequence of conviction and that he or she may be able to contest removal.

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Hunter, Chair; Darneille, Vice Chair; Alexander, Ranking Minority Member; Carlyle, Cody, Dickerson, Haigh, Hudgins, Kagi, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Hasegawa, Vice Chair; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Kenney, Parker, Ross, Schmick and Wilcox.

**Staff:** Alex MacBain (786-7288).

### **Background:**

Any alien offender who has been sentenced under the Sentencing Reform Act of 1981 and who has been found by the United States Attorney General to be subject to a final order of deportation or exclusion may be placed on conditional release status. If placed on conditional release status, the offender is transferred to the custody of the Immigration and Customs Enforcement (ICE) division of the U.S. Department of Homeland Security.

An offender may not be released on a conditional release status unless the Secretary of the Department of Corrections (Secretary) finds that such a release is in the best interest of the state. Conditional release status may only be allowed with the approval of the sentencing court and the prosecuting attorney of the county of conviction.

If an offender is serving a sentence for a violent offense, sex offense, or for an offense that is a crime against a person, he or she may not be placed on conditional release status. Once an offender is turned over to the ICE, the Department of Corrections (DOC) must issue a warrant for the offender's arrest within the United States which will remain in effect until the expiration of the conditional release. The unserved portion of an offender's term of confinement is tolled when the offender is released to the ICE. If the offender is arrested, the DOC must seek extradition as necessary and the offender must be returned to the DOC for the completion of the unserved portion of his or her term of total confinement.

Prior to acceptance of a plea of guilty, the state court must determine that the defendant has been advised that the potential consequences of conviction include deportation, exclusion from admission to the United States, or denial of naturalization.

**Summary of Engrossed Substitute Bill:**

The placement of an alien offender on conditional release status no longer requires the Secretary to find that such placement is in the best interest of the state. The approval of the sentencing court and the prosecuting attorney is no longer needed.

If an offender is serving a sentence for a violent offense or a sex offense he or she may not be placed on conditional release status. Before an offender is placed on conditional release status, the Secretary is required to enter into an agreement with the ICE that once an alien offender has been turned over to the ICE and placed on conditional release status, that offender will remain in total confinement at a facility operated by the ICE pending the offender's return to his or her country of origin.

A warrant for the arrest of an offender issued upon release of the offender to the ICE remains in effect indefinitely. If an offender is arrested after being placed on conditional release status, the DOC may, but is not required to, seek extradition to have the offender returned to the DOC.

The provisions related to conditional release would apply to persons convicted before, on, or after the effective date of the bill.

Prior to accepting a defendant's guilty plea, a state court must advise the defendant that he or she may be subject to early release for removal as a consequence of conviction and that he or she may be able to contest removal.

The DOC must provide written notice of rights in removal proceedings to all offenders who are subject to early release. The notice must be provided as early in the removal process as feasible. The DOC must work with a nonprofit legal services organization that is qualified to appear in immigration court to create the written notice.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Under current law, the sentencing court and the prosecutor must approve the placement of an offender on conditional release status. In the last two years, the DOC sent out letters on 80 cases to the courts and prosecutors and in only one case did both the court and the prosecutor consent to conditional release. The DOC supports the bill. During this economic crisis the state taxpayers should not pay to incarcerate offenders who will be deported at the end of their sentence anyway.

(With concerns) The scope of the bill would extend beyond undocumented residents to all legal non-citizens who might be subject to deportation due to a felony conviction. The bill does not include any protections for individuals who may be able to contest deportation even after a final order of deportation has been entered. There is an amendment that could be adopted that would mitigate the due process concerns raised by the bill. The amendment would require the DOC to provide notice to individuals who may be considered for early release so those individuals have the opportunity to access legal representation. For those being sentenced after enactment, the court would be required to alert the individuals of their rights at sentencing before being transferred to DOC custody.

(Opposed) None.

**Persons Testifying:** (In support) Representative Darneille, prime sponsor; Scott Blonien, Department of Corrections; and Tom Brandt.

(With concerns) Jorge Baron, Northwest Immigrant Rights Project.

**Persons Signed In To Testify But Not Testifying:** None.