
Ways & Means Committee

HB 2143

Brief Description: Modifying community supervision provisions.

Sponsors: Representatives Darneille and Hunter; by request of Department of Corrections.

Brief Summary of Bill

- Reduces the community custody sentence for felony sex offenders to two years.
- Reduces the community custody sentence for offenders convicted of a violent offense to one year.
- Requires community custody officers to report the facts of an offender's case to local law enforcement or local prosecution when an offender has been arrested for a new felony offense while on community custody.
- Provides that DOC will hold an offender in total confinement for up to three days following the time of arrest for a new crime.
- Provides that community custody offenders committing a first low-risk violation will be sanctioned to community-based interventions.
- Provides that community custody offenders committing a second or subsequent low-risk violation will be sanctioned up to three days in total confinement.
- Provides that community custody offenders committing a high-risk violation will be sanctioned up to 30 days in total confinement.

Hearing Date: 1/11/12

Staff: Yvonne Walker (786-7841) and Alex MacBain (786-7288).

Background:

Community custody is the portion of an offender's sentence served in the community subject to supervision by the Department of Corrections (DOC). The court must order community custody

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for an offender who is convicted of specified crimes. While on community custody, offenders are subject to a variety of conditions imposed by the court and the DOC. If an offender violates the conditions, the offender may be required to serve up to the remaining portion of his or her sentence in confinement.

Community Custody Terms.

Certain crimes carry a mandatory term of community custody as imposed by the courts. If an offender is sentenced to the custody of the DOC for a sex offense or a serious violent offense, the court must, in addition to the other terms of the sentence, sentence the offender to community custody for three years.

If the offender is convicted of a violent offense (that is not a serious violent offense), the court must sentence the offender to 18 months of community custody. Other offenders that have been convicted of a crime against persons, Unlawful Possession of a Firearm where the offender is a criminal street gang member or associate, a drug offense, or a felony violation of Failure to Register offense, must be sentenced to one year of community custody by the court.

The DOC supervises offenders who are convicted of certain misdemeanors and gross misdemeanors and are sentenced to probation. Courts are required to order probation for offenders convicted of the following offenses:

- Sexual Misconduct with a Minor in the second degree;
- Custodial Sexual Misconduct in the second degree;
- Communication with a Minor for Immoral Purposes;
- non-felony Failure to Register as a Sex Offender;
- a repetitive domestic violence offense; and
- Assault in the fourth degree or violation of a domestic violence (DV) court order where the offender has a prior conviction for a violent offense, a sex offense, a crime against a person, Assault in the fourth degree, or violation of a DV court order.

Community Custody Conditions.

Every offender sentenced to a period of community custody must report and be placed under the supervision of the DOC. The DOC must assess the offender's risk to reoffend and may establish and modify the offender's conditions of community custody based on the offender's risk to community safety and conditions imposed by the court. If the DOC imposes any additional conditions the DOC must notify the offender in writing of any such additional conditions or modifications relating to the offender's community custody. The offender may request an administrative review by the DOC by the close of the next business day after receiving notice of a condition imposed or modified by the DOC.

Detainment following Arrest & Reporting Requirements.

The DOC may issue warrants for the arrest of any offender who violates a condition of community custody. If an offender has been arrested for a new felony offense while under community custody, the DOC must hold the offender in total confinement until a hearing before the DOC is provided or until the offender is formally charged for the new felony offense, whichever is earlier.

A community corrections officer (CCO) may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender must be reported by the CCO, with recommendations, to the court or the DOC hearings officer.

Upon an arrest, 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.

Hearings & Sanctions.

If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the DOC prior to the imposition of sanctions. For offenders not in total confinement, the hearing must be held within 15 working days. For offenders in total confinement, the hearing must be held within five working days.

Generally, an offender who violates any condition or requirement of his or her community custody may be sanctioned by the DOC with up to 60 days confinement for each violation. Alternatives to confinement, such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, education or counseling sessions, electronic home monitoring or any other sanctions available in the community, may be used in lieu of confinement.

An offender who has not completed his or her maximum term of total confinement, and is found in violation of the terms of supervision at a third community custody violation hearing, must be returned to total confinement in a state correctional facility to serve the remaining portion of his or her sentence. There is an exception for instances where it is determined that returning the offender to incarceration would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

Firearms.

It is a community custody violation for an offender sentenced to a term of community custody under the supervision of the DOC to own, use, or possess firearms or ammunition.

Summary of Bill:

Community Custody Terms.

An offender convicted of a felony sex offense will be sentenced to community custody for a two-year term. An offender convicted of sex offense under the “determinate plus” model will continue to have a three-year term of community custody.

An offender convicted of any violent offense will be sentenced to community custody for one year.

An offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation will receive a community custody sentence of no more than 12 months.

The changes to the terms of community supervision take effect March 1, 2012, and would impact offenders that commit an offense on or after that date.

Community Custody Conditions.

Upon intake, the DOC must notify an offender in writing of any additional community custody conditions or modifications and the DOC's violation process. The offender may request an administrative review by the close of the next business day after receiving notice of any additional condition imposed or modified by the DOC.

Detainment following Arrest & Reporting Requirements.

If an offender has been arrested by the DOC for a new felony offense while on community custody, the facts and circumstances of the conduct must be reported by the community corrections officer (CCO) to local law enforcement or local prosecution for consideration of new charges. The CCO's report will serve as notice that the DOC will hold the offender in total confinement for up to three days following the time of arrest.

If a CCO arrests an offender for a crime committed in his or her presence, the facts of the offender's conduct and any recommendations for the offender must be reported by the CCO to the court, or to local law enforcement or local prosecution (instead of a DOC hearings officer) for consideration of new charges.

When an offender under the custody of the DOC is arrested for a community custody violation, the DOC must compensate the local jurisdiction where the offender is being detained until the DOC releases its detainer.

Hearings & Sanctions.

If an offender is accused of violating any condition or requirement of community custody, he or she must be sanctioned through an offender disciplinary proceeding. The DOC must develop and notify the offender in writing of the violation process. Only those offenders accused of committing a high risk community custody violation will receive a hearing before a DOC hearings board.

The sanction imposed by the DOC must be determined based on the offender's violation behavior. The DOC must adopt a rule defining the violations as a low risk violation or a high risk violation, the structured violation process, the presumptive sanctions, and aggravating and mitigating factors.

The DOC must intervene when an offender commits a violation as follows:

- For the first low-risk violation, in lieu of confinement, the offender must be sanctioned to one or more community-based interventions. The DOC must adopt a rule prescribing community-based interventions.
- For the second or subsequent low-risk violation, the offender must be sanctioned to not more than three days in total confinement. The DOC must adopt a rule prescribing at which point subsequent low-risk violations will be addressed as a high-risk violation.
- If an offender is accused of committing a high-risk violation he or she is entitled to a hearing before the DOC hearings board prior to imposition of sanctions. For offenders not in total confinement the hearing must be held within 15 business days, but not less than 24 hours, after written notice of the violation. For offenders in total confinement, the high risk violation hearing must be held within five business days.

The DOC must sanction an offender to not more than 30 days in total confinement when on offender commits a high risk violation.

If an offender has not completed his or maximum term of total confinement and is subject to a third or more community custody high-risk violation hearing, the offender must be returned to total confinement in a DOC facility unless the DOC determines that returning the offender to incarceration would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

Firearms.

The act of owning, using, or possessing firearms or ammunition is considered a high risk violation for an offender serving a community custody sentence.

Appropriation: None.

Fiscal Note: Requested on December 1, 2011.

Effective Date: The bill contains an emergency clause and takes effect on March 1, 2012, except for sections 3 and 10 which take effect May 1, 2012.