

HOUSE BILL REPORT

2E2SSB 6204

As Passed House - Amended:

April 10, 2012

Title: An act relating to community supervision.

Brief Description: Modifying community supervision provisions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Hargrove; by request of Department of Corrections).

Brief History:

Committee Activity:

Ways & Means: 2/24/12, 3/7/12 [DPA].

First Special Session

Floor Activity:

Passed House - Amended: 4/10/12, 77-21.

Brief Summary of Second Engrossed Second Substitute Bill (As Amended by House)

- Amends the process and sanctions for violations of conditions of community custody.
- Provides that offenders who commit a first low-level violation are subject to nonconfinement sanctions.
- Provides that offenders who commit a second or subsequent low-level violation are subject to up to three days confinement.
- Provides that offenders who commit high-level violations are subject to sanctions of up to 30 days confinement and are entitled to a hearing before the sanction is imposed.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

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.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Alex MacBain (786-7288) and Sarah Koster (786-7303).

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 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;
- nonfelony Failure to Register as a Sex Offender;
- a repetitive Domestic Violence (DV) offense; and
- Assault in the fourth degree or violation of a 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 from 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 and 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 and 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.

The offender has the right to be present at the hearing, have assistance, offer testimony, witnesses, provide written evidence, and question witnesses.

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 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 Amended Bill:

Detainment Following Arrest and Reporting Requirements.

If an offender has been arrested by the DOC for a new felony offense while on community custody or for a crime committed in a CCO's presence, the facts and circumstances of the conduct must be reported by the CCO to the court, 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 the report, except that if the offender's underlying offense is one of 21 listed serious felonies, the DOC will hold the offender for 30 days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first.

When an offender under the custody of the DOC is arrested for a community custody violation or a CCO arrests the offender for a crime committed in the CCO's presence, the DOC must compensate the local jurisdiction where the offender is being detained until the DOC releases its detainer.

Hearings and Sanctions.

If an offender is accused of violating any condition or requirement of community custody, the DOC may address the violation behavior through offender disciplinary proceedings. The offender must be notified in writing of the violation process. Only those offenders accused of committing a high-level 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 rules defining low-level and high-level violations, presumptive sanctions, and aggravating and mitigating factors.

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

- for the first low-level violation, in lieu of confinement, the DOC may sanction the offender to one or more nonconfinement sanctions;
- for the second or subsequent low-level violation, the offender may be sanctioned to not more than three days in total confinement;
- if an offender is accused of committing a low-level violation, the offender will be given the opportunity to respond prior to imposition of sanctions; and
- if an offender is accused of committing a high-level violation, he or she is entitled to a hearing before the DOC hearings board prior to imposition of sanctions, which may be up to 30 days in total confinement.

If an offender has committed five low-level violations, any subsequent violations will be sanctioned as high-level violations.

The offender may be held in total confinement pending the hearing, with prehearing time served credited to the offender's sanction time. If the offender's underlying offense is one of 19 listed serious felonies, the offender must be held in confinement pending the hearing. For offenders in total confinement, the DOC must hold a hearing within five business days. For offenders not in total confinement, the DOC must hold a hearing within 15 business days.

The offender has the right to be present at the hearing, have assistance, offer testimony, witnesses, written evidence, question witnesses, and receive a written summary of the reasons for the hearing officer's decisions.

Alternatively, an offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to 60 days confinement for each violation.

The state and its offices, agents, and employees may not be held criminally liable for a decision to elevate or not elevate an offender's behavior to a high-level process, unless the decision is made with reckless disregard.

Firearms and Explosives.

An offender on community custody who has actual or constructive possession of a firearm, ammunition, or explosives shall be reported to local law enforcement or local prosecution for consideration of new charges.

Effective Date/Emergency Clauses.

The changes to the terms of community supervision take effect June 1, 2012, and apply retroactively and prospectively regardless of the date of an offender's underlying offense. The 30-day cap on sanctions which may be imposed for violations of community custody is effective immediately upon the bill becoming law.

The DOC Implementation Obligations.

The DOC is directed, for the next two years, to provide inpatient or outpatient chemical dependency treatment to offenders, within available resources; ensure law enforcement is informed of the changes in this bill; maintain channels of communication between the DOC and law enforcement about individual offenders; gather input from CCOs; and make annual reports on the implementation of this bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on June 1, 2012, except for section 2, relating to violation sanctions, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The bill reflects a realignment of resources in order to increase the use of evidence-based practices within community corrections. Implementation of this bill will create significant changes especially with respect to the hearings process, the violation sanction process, and reinvestment of savings into additional programming and treatment. The DOC continues to work with the Washington State Institute for Public Policy and national experts to institute evidence-based practices around a policy of swift and certain sanctions. The changes in the bill maintain the infrastructure of the strong statewide system for community corrections, reducing contract dollars that are reinvested to reduce recidivism of offenders on community supervision. Reinvestment of funding in chemical dependency

treatment and other treatment interventions in conjunction with supervision will reduce the revolving door of our prisons and eliminate many of the cases clogging our court system. The bill also increases transparency through ensuring that new crimes are forwarded to local authorities for prosecution which will increase offender scores. When these types of crimes are handled through the violation process, they are not reflected in an offender's score if they are prosecuted for a future crime.

(In support with concerns) Community corrections officers care about this issue and greatly prefer the current version of the bill to previous versions that also included changes to the length of supervision for certain offenders. There are concerns about the lack of discretion for corrections officers in the new violation process, and the fact that a 30-day sanction may not be enough for the most sophisticated offenders. Community corrections officers are fully on board with the realignment of resources and with providing a level of savings, but nobody knows these offenders like the community corrections officers working in our communities and maintaining discretion for our officers in the violation process is very important. We hope to continue to have input in the development of this bill.

(With concerns) On a daily basis, CCOs are protecting our communities from these offenders. Limiting the discretion of our officers who have the experience working with these offenders can jeopardize public safety. The goal of CCOs is to stop crime before it happens. Three days of incarceration time may not be enough to regulate a dangerously mentally ill offender who is not taking medications. In three days that offender could be worse rather than better. Likewise, a 30-day sanction may not be enough for a level 3 sex offender who is obsessing on a new victim, or for a victim to relocate. Some of the changes in the bill could be done through policy and do not require new law.

(Opposed) None.

Persons Testifying: (In support) Sandy Mullins and Anmarie Aylward, Department of Corrections; and Paul Beattie, American Behavioral Health System.

(In support with concerns) Matt Zuvich and Ginger Richardson, Washington Federation of State Employees.

(With concerns) Anthony Shaver, Washington Federation of State Employees; and Dana Hufford, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.