

HOUSE BILL REPORT

2E2SHB 2010

As Passed House
May 18, 1995

Title: An act relating to corrections.

Brief Description: Revising corrections provisions.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Ballasiotes, Quall, Sherstad, Chandler, Schoesler, Radcliff and Blanton).

Brief History:

Committee Activity:

Corrections: 2/28/94, 3/1/95, 3/8/95 [DPS];
Appropriations: 3/16/95, 3/21/95 [DP2S(w/o sub COR)].

Floor Activity:

Passed House: 4/7/95, 88-7.
Senate Amended.
House Does Not Concur.
Conference Granted

First Special Session

Floor Activity:

Passed House: 5/18/95, 90-0.

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Koster; Radcliff; K. Schmidt and Schoesler.

Minority Report: Do not pass. Signed by 2 members: Representatives Cole and Dickerson.

Staff: Antonio Sanchez (786-7383).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Corrections. Signed by 17 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Hargrove; Hickel; Lambert; Lisk; McMorris; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 11 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Dellwo; G. Fisher; Jacobsen; Poulsen; Rust; Sehlin; Thibaudeau and Wolfe.

Staff: John Woolley (786-7154).

Background: The Washington State Department of Corrections (DOC) is required to promote public safety by providing facilities and services that control and redirect the behavior of adult felony offenders committed to its jurisdiction by the courts. The system provides programs designed to avoid idleness and promote the work ethic and individual self improvement. The Department of Corrections consists of five divisions: the Division of Prisons, the Division of Offender Programs, the Division of Institutional Industries, the Division of Community Services, and the Division of Management and Budget. Three separate functions are carried out in sections attached to the secretary's office: Employee Services, Public Affairs, and Legislative Affairs.

Recreation: Every Department of Corrections institution provides a full range of recreational facilities, including gymnasiums, recreation yards, hobby shops, and day rooms for inside activities. Within those facilities, a variety of recreational activities occur that are designed to reduce inmate idleness. These include softball, volleyball, basketball, soccer, track activities, weight lifting, and physical fitness programs. Recreational leaders are responsible for organizing, monitoring, and supervising the recreational activities in the institutions.

Extended Family Visitation: All prison inmates are allowed to have visits from members of their families, including overnight visitation with their spouses, except for those under penalty of death, housed in segregation or intensive management, or who are in some way restricted. The department defines which family members can participate in the program and establishes the terms and conditions for access to and use of the extended family visitation units.

During 1993 and 1994, approximately 2,477 inmates used the extended family visitation units.

Obscene, Erotic and Violent Material: Obscene, erotic, and violent materials are available to an extent to inmates, in the form of video tapes, cable television, network

television, audio tapes, and written materials such as magazines and books. The Department of Corrections currently maintains standards for the appropriate use or elimination of obscene, sexually explicit, or violent materials. In addition, each institution further defines, by specific field instructions, the type of erotic or violent materials inmates can have access to.

Movies and Videos: In 1994, the Legislature made it against the law to show unrated, X-rated, or NC-17 rated movies in adult correctional facilities. Movies and videos with an industry "R" rating are shown within all DOC facilities providing they do not violate any of the department's policy guidelines. As such, some television and video materials available to inmates contain sexual nudity, sexual activity, or graphic violence. The Department of Corrections considers movies to be excessively violent that contain sexual and/or physical violence which exceed what is proper, normal, or reasonable.

Mail: Inmates are restricted by departmental policy from receiving mail that contains obscene or sexually explicit materials. All materials must be mailed or delivered to the facilities and are inspected by mail room staff. Mail room screening varies from facility to facility based on the facility's interpretation of the obscenity policy.

Case Law on Obscenity and Violence: Regulations restricting prisoner access to materials that are designed to arouse sexual drives or which encourage violence have been upheld against First Amendment challenges. However, prisoners are not without First Amendment rights, and restrictions on the materials they are permitted to receive must affect only those materials which are detrimental to the goals of security, order, and rehabilitation. It is the burden of the state to prove that the obscene or violent materials are detrimental to order and rehabilitation (Aikens v. Jenkins; Carpenter v. State of South Dakota; Procnunier v. Martinez).

Cable and Closed-Circuit Television: All Department of Corrections facilities have or are planning to install satellite or cable systems. Generally, the department pays for the installation of the cable or satellite system and the inmates pay for maintenance and monthly programming fees. The cost for installing cable television access at Airway Heights Correctional Facility was approximately \$100,000. All facilities allow inmates to have television in their cells and/or living units or both. Inmates pay for their own personal televisions. Some of the facilities are currently using, or are prepared to use, the cable systems for educational programming to defray costs of on-site educational classes.

Offender Education: The Department of Corrections currently contracts with nine community colleges to provide educational services for offenders at 15 correctional facilities. Instruction is offered in adult basic education, life skills training, and vocational education. Funding for offender education programs is provided primarily by state legislative appropriation and is administered by the department. Some federal

funds are also used for specific education programs. In fiscal year 1995, the total operating budget for offender education is \$11, 789,688.05 in state dollars. Last year, the department awarded 578 general educational development certificates (GED), 41 high school diplomas, 325 adult basic education certificates, 700 locally approved vocational certificates, 229 state approved vocational certificates, 75 academic associated degrees, and 69 vocational associate degrees.

Correctional Industries: The Department of Corrections Division of Correctional Industries operates five classes of work programs which provide jobs, training, and work experience for inmates.

Under current law, the department is responsible for establishing deductions to be made from the inmate's wages to contribute to the cost of incarceration and the development of the Correctional Industries program. The following are the wages and deductions for inmates working in Correctional Industries.

Class I - Private sector businesses operated in DOC. \$4.50 to comparable wage.

DEDUCTIONS:

5% Crime victims compensation

10% Inmate savings account (non-lifers only)

20% Cost of incarceration

Class II - DOC industries (license plates, furniture, milk) \$.30 to \$.90 per hour.

DEDUCTIONS:

5% Crime victims compensation

10% Inmate savings account (non-lifers only)

15% Cost of incarceration

Class III - DOC maintenance of prison \$30 to \$50 per month.

DEDUCTION:

5% Crime victims compensation

Class IV - Services to state agencies and local government. \$.25 to \$4.25 per hour.

DEDUCTION:

5% Cost of incarceration

The business operations and ties with private sector partners are managed by Correctional Industries staff and the overall direction is established by the Correctional Industries board of directors. The Correctional Industries board of directors is comprised of both business and labor interests. The board has the authority to set policy, provide overall guidance, and to manage and review the performance of the organizations.

Department of Corrections Health Care: One of the most significantly rising costs in our prison system is inmate health care. Since 1986, the health care expenditures for inmates in prison have almost tripled. The expenditures have risen from \$10.97 million in 1986 to \$33.3 million in 1994. This represents an increase of 86 percent in the average annual expenditure per offender for health care. These costs are expected to continue to rise as medical costs inflate, the prison population grows, and an increasing number of inmates become older and need additional health and long-term care.

Currently, the Department of Corrections' policy is to "provide, at a minimum, a degree of care which is designed to reasonably respond to an inmate's serious medical and dental needs." Class action litigation has helped shape this policy and the health care services that the state is required to provide under it. The department is required to pay for all the health care needs of inmates attended to under this policy. Health care provided by the Department of Corrections can be grouped into four broad types of care as follows:

- Medical care to meet inmates' serious medical needs
- Basic dental care
- Mental health treatment and counseling
- Drug and alcohol rehabilitation

Medical co-payments have been found to reduce health care expenditures by discouraging over utilization and inappropriate use of health care services and are an important part of health care reform. Currently, inmates who receive health care in state prisons are not required to pay in part or in full for their health care. The inmates are also not required to pay co-payments for each medical visit.

Operating Costs: In 1994, the legislative budget committee conducted a report on the Department of Corrections (Report 94-1). The report noted that custody staffing, medical services, and administration are significantly different in Washington than in other states, and as such, deserve further review.

Summary of Bill:

WORK AND EDUCATION PROGRAMS

Policies. The department must establish policies on work and education programs, including a requirement that inmates work or participate in education, or both.

Assessment. With limited exceptions, the department is directed to assess an inmate's educational level and skills within 30 days of the inmate's commitment to the department. The department is required to use professionally accepted tests for reading, math, and language skills to measure grade level equivalencies.

Exemptions - The requirement for inmates to participate in work and education programs to receive good time and qualify for use of privileges does not apply to inmates with physical or mental impairments, inmates in segregation, inmates in protective custody, inmates on death row, inmates in sex offender treatment or mental health treatment, or inmates in illegal alien offender camps.

Prioritization/Placement Criteria - All inmates with skills below 8th grade basic skills level must be placed in a combined work and education program. Inmates are placed in appropriate programs based on placement criteria: release date; custody level, education and work skills assessment; economic circumstances, prior performance.

Financial Responsibility - Inmates are required to pay on a sliding scale, based on ability to pay, for the following: (1) AA or BA programs when placed by DOC and (2) second and subsequent vocational programs associated with work programs. Inmates must pay full costs or tuition for the following: (1) post-secondary academic degree programs when not placed in the program by DOC; second and subsequent vocational program when not associated with work programs. Participation in education programs is on a space available basis only.

Funding and Prioritization of Resources - The department is required to prioritize resources for education in the following order: (1) basic academic skills through high school or GED and vocational training; (2) additional work and education programs based on assessment and placement criteria; (3) other work and education programs not related to assessment and placement criteria.

Miscellaneous Education and Work Issues - After review of all education and vocational programs, the department must take the necessary steps to ensure all programs are relevant to work programs and skills necessary for employability. The department must adopt a plan to reduce the per-pupil cost of instruction by increasing volunteers and implementing technological efficiencies such as distance learning. The department is required to coordinate education/work programs to facilitate continuity of programming among inmates who are transferred.

PRIVILEGES\EARNED EARLY RELEASE

The department is mandated to develop and implement a system, in rule, that links an inmate's participation in education and/or work programs with an inmate's access to privileges. All inmates are required to pay for both the capital and operating costs of privileges. The department is required to develop the operating standards in rule for the amount and type of payments for privileges.

EXTENDED FAMILY VISITATION PROGRAM

The department is required to establish a uniform policy on the privilege of extended family visitation. In this policy, DOC must give 60 days notice to the Legislature of intent to change policy and is required to seek the advice of the joint legislative committee prior to making any changes. In addition to APA requirements, DOC must give 30 days notice to the Legislature of any public hearing on adoption, revision, or repeal of any rules relating to extended family visitation, except in emergency.

NAME CHANGES

Inmates applying to the court to have their name changed are required to notify the department in advance. The court is prohibited from issuing the name change order if doing so would interfere with legitimate penological goals. Exceptions can be made for religious reasons, cultural reasons, or in recognition of marriage or divorce. The department may require the offender to continue using his or her committed name during all interactions with department personnel. Violation of the notice requirement is a misdemeanor.

DEDUCTIONS FROM OUTSIDE MONEY

All money received by an inmate from outside prison is subject to the same mandatory deductions as Class I industry wages. This includes:

- 5 percent** Crime victims compensation
- 10 percent** Inmate savings account (non-lifers only)
- 20 percent** Cost of incarceration

INMATE HEALTH CARE CO-PAYMENTS

All inmates are required to receive a health assessment upon entry to the prison system. Inmates are required to pay a \$3 co-payment for health care services that are inmate-initiated and non-emergency. There is no requirement to pay if the visit is initiated by prison staff or if there is a serious health care need. Indigent inmates are allowed to obtain health care services without cost. The department is required to report annually to the Legislature on several aspects of the co-payment program. The department is required to adopt a uniform policy relating to the distribution and replenishment of personal hygiene goods. Inmates are required to pay for the personal hygiene goods. Unpaid co-payments and payments for personal hygiene items are assessed as a debt to the offender.

COST ASSESSMENT FOR SUPPLIES AND SERVICES

The department is required to charge all inmates for services and supplies and recoup assessment for essential services or supplies provided to indigent inmates. No inmate will be denied constitutionally required services or supplies based on inability to pay.

WORK ETHIC CAMP

Eligibility is expanded by removing the upper age limit of 28 years, and by lowering the minimum eligible sentence from 22 months to 20 months. Certain drug dealers can be eligible after a special review of their circumstances. The department may identify offenders who are eligible for the work ethic camp. With the concurrence from the sentencing judge, the department can refer the offender to the work ethic camp and adjust the time served.

ILLEGAL ALIEN OFFENDER CAMP

By January 1977, the department is authorized to establish a camp for alien offenders to be located at an existing facility. The department must develop an implementation plan by December 1995 to meet the following goals: (1) expedited deportation; (2) reduced daily costs of incarceration; (3) enhanced public benefit through work programs and exemption from education programs; (4) minimal access to privileges; (5) maximized use of non-state resources; (6) recommendations for state law and fiscal issues necessary for implementation.

The plan must address: (1) eligibility criteria for prompt admission; (2) minimum/maximum length of the camp; (3) operational elements; (4) mitigation of adverse impact on other offender programs; (5) meeting the goals of the camp.

The department must consult with the joint legislative committee and appropriate public safety organizations.

DEPARTMENT OF CORRECTIONS BUDGET CUTS

Any staffing cuts required by the 1995-1997 budget shall be implemented to preserve the safety of the institution and the public. All reductions must be targeted toward exempt positions within DOC, including management level positions of lieutenant and above. Future recreation leader ratios must stay constant at 1995-1997 budget level.

AUDITS, REVIEWS, AND STUDIES

- The Legislative Budget Committee is required to conduct an audit review of the department's budget process and the department's 1995-97 operating budget request.

- The Health Care Authority is required to contract out for review of the corrections medical system and assess potential savings by contracting out correctional medical services.
- The Department of Transportation is required to review DOC's marine transportation operation and conduct a cost-efficiency analysis.
- The Office of Financial Management, in cooperation with the Department of Corrections and General Administration, is required to conduct a cost-efficiency study of the department's food services program.
- The Department of Corrections is required to review the concept of rotational bunking and analyze how this concept can be implemented.

CORRECTIONAL INDUSTRIES BOARD

The board is mandated to review the feasibility of implementing a number of different proposals for correctional industries.

DEPARTMENT OF CORRECTIONS' COST EFFICIENCY FOCUS GROUP

The department is directed to establish a focus group including representation from management, line staff, and other selected vested individuals. The focus group will meet quarterly and make recommendations concerning improving operations and identifying cost efficiencies. The superintendents shall prepare annual reports summarizing their responses to the recommendations.

LEGISLATIVE OVERSIGHT COMMITTEE

A six-member legislative oversight committee is established. The oversight committee is required to oversee implementation of this act and related laws. The committee is required to review department rules. The committee is required to report to the Legislature on the department's cost savings and to make recommendations for further savings.

ART AND CAPITAL CONSTRUCTION IN CORRECTIONAL FACILITIES

No money may be appropriated or expended for public art in DOC facilities through June 30, 1997. The Arts Commission and DOC must prepare a report to the legislature by July 1996 on the feasibility of developing a Class I or II industry for creation of public art within DOC. The requirements of the report are outlined.

CLASS II INDUSTRIES

Subject to the approval of the Correctional Industries Board, prohibitions against contracting out work performed by classified employees shall not apply to contracts with Washington business entered into by the department through Class II industries.

SUPERVISION OF MISDEMEANANT PROBATIONERS

The requirement that all superior court misdemeanants be placed under supervision is removed. Judges are given the discretion to make supervision decisions. The Department of Corrections is authorized to collect supervision fees up to \$100 per month per offender. The Washington Law and Justice Advisory Council is required to develop proposed standards and report back to the Legislature.

FEDERAL WAIVERS FOR MCNEIL ISLAND

The department is directed to seek federal waivers to allow expansion land use and opportunities at McNeil Island. The department is also required to identify any state statutory or regulatory constraints that would impede the requested expansions on the island.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Corrections) Offenders need meaningful work and treatment as well as incentives for following the rules. Offenders should work, earn and learn. There is a failure of leadership by Department of Corrections. If the House and Senate do not provide leadership to reform our system then there will not be any reform. Family visits should be privileges. The Department of Corrections in Washington has a bigger budget than Oregon corrections.

Class I prison industries are beneficial to inmates. We need programs like this that teach skills, provide decent wages and provide non-criminal opportunities for inmates when they get out of prison.

(Appropriations) It is important to develop a work ethic on the part of prisoners. Increases in participation in correctional industries and education programs will develop that work ethic. By reducing administrative overheads, the high cost of this state compared to other states will be reduced. We are better to criminals than we are to senior citizens and must rediscover old truths that you get ahead through education and hard work. The bill begins the process of cutting back on frills.

Testimony Against:

(Corrections) [Inmate Education]: We need to use technology, but not on a stand-alone basis. There is a low completion rate without a "live" instructor. Computer instruction programs can be very expensive and they do not motivate students. Long hours in the classroom won't work--three hours should be maximum. Recidivism rates are directly related to the amount of education offenders receive.

(Corrections) [Inmate work programs]: The eight-hour work day cannot be achieved without sufficient support staff and enough work programs, space and equipment. Inmate labor will compete with private business and the prison dairy project will undercut the milk market from private enterprise. Prison dairies should be under the same regulation as other dairies. You cannot talk major program expansion and cost savings. This bill proposes to take jobs away from honest people.

(Corrections) [Obscene materials]: There is a problem with the sections on exotic material: each person who looks at obscene material sees something different. It will be extremely difficult to have uniformity throughout the state on the obscene materials issue.

(Corrections) [Restriction of privileges]: Restriction of television is not without drawbacks. Televisions in cells are preferred for better control of inmates. This bill will make managing inmates more difficult. Reducing visitation severely impacts the effectiveness of the visits. Offenders need a personal support system and the bonding process that needs to take place during visitation cannot be reduced. Recidivism rates are reduced when inmates are united with their families. This bill places a hardship on families.

(Appropriations) While the bill is supported in its emphasis to get as many work activities into the prisons as possible, other components are not supported. It cuts staff by 500 at a time of increasing inmates. The management cuts include correctional lieutenants. By eliminating recreation staff, inmates are placed in a position of authority over other inmates, it reduces community corrections officers, and it is frequently more rational to pay overtime rather than to pay more full time employees.

Testified: (Corrections) Tom Rolfs, Department of Corrections (with concerns); Janeen Wadsworth, Correctional Industries (con); Norm Maleng, King County Prosecutor (pro); Dr. George Delaney, Pierce College (con); Allan Darr, Operating Engineers Local 302 (con); Larry Stevens, United Subcontractors Association (with concerns); Larry Goodman, Washington Federation of State Employees (con); Rick Slunaker, Associated General Contractors of Washington (with concerns); Julia Holder (con); James L. King Jr., Asbestos Abatement Industry Coalition (con); Jay Iseman (con); Eugene St. John, Washington Prison Employees Association (pro); Bob

Dilger, Washington State Building and Construction Trades Council (con); Jerry Annis, United States Dairy Federation; and Rashinda White, R & R Educational Resources (pro).

(Appropriations) Representative Ida Ballasiotes, prime sponsor; Representative Mark Schoesler, sponsor; Norm Maleng, King County Prosecutor (pro); Chase Riveland, Secretary, Department of Corrections; Darren VonSteeg, Chris Hobson, Bill Smith, John Gorman and Evelyn Rieder, Washington Federation of Teachers (con); Rick Slunaker, Associated General Contractors (con); Robert Dilger, Washington State Building and Construction Trades Council (con); Karen Gose, Washington State Arts Commission (con); Dan Coyne, Washington State Dairy Federation (pro with concerns); Larry Goodman, Washington Federation of State Employees (pro with concerns); Sherry Appleton, Washington Defender's Association (con); Eugene St. John, Washington Public Employees Association (pro); and Larry Johnson, Washington Public Employees Association (pro).