

HOUSE BILL REPORT

E2SHB 2010

As Amended by Senate

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 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 Divisions 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 a 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 family, including overnight visitation with their spouse, 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 their 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; Proconier v. Martinez).

Cable and Closed-Circuit Television: All Department of Corrections facilities have satellite or cable systems or are planning to install one. 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 Correctional Industries board of directors. The Correctional Industries board of directors is made of both business and labor interests. It has the authority to set policy, provide overall guidance 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. They have gone 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 prison are not required to pay in part or in full for their health care. They 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:

I. 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, to the extent that jobs and education programs are available.

Assessment. The department is directed to assess all inmates' educational level and skills within 30 days of their commitment to the department.

If an inmate is below the 8th grade level, the inmate must spend 1/2 time in education and 1/2 time in work, if the programs are available.

If an inmate is at or above 8th grade level, the inmate must work full-time, if a job is available, otherwise the inmate must pursue a General Equivalency Diploma (GED) or high school diploma full-time, if this is available, otherwise the inmate is required to be in vocational training, if vocational training is available.

Exemptions. The requirement that inmates must be in a work or an education program 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.

Vocational training. If possible, vocational training should relate to training for correctional industries jobs or training for post-confinement employment.

Education programs. For all inmates who are below the 8th grade level, the department must develop educational programs and provide specific funding for those programs, to be phased in as follows:

- to cover 25% of eligible inmates by 7/1/96;
- to cover 50% of eligible inmates by 7/1/97;
- to cover 75% of eligible inmates by 7/1/98;
- to cover 100% of eligible inmates by 7/1/99.

Inmates with life sentences. Inmates with life sentences are not subject to the education requirements.

Use of technology in education. The department is required to reduce the use of live instructors and increase the use of technology like distance learning.

Higher education costs. Inmates must pay a portion of the costs of community college vocational programs, the portion to be determined by the department. All other higher education program costs are to be paid entirely by the inmate.

Failure to participate in available work or education. The failure to participate in work or education programs will result in the loss of earned early release credits for "good performance" and can lead to the loss of privileges (see below).

II. OBSCENE, EROTIC, OR EXCESSIVELY VIOLENT MATERIALS

Inmates are prohibited from possessing obscene, erotic, or excessively violent materials. Definitions of obscene, erotic, or excessively violent materials are established.

III. CABLE, CLOSED CIRCUIT, SATELLITE TV

New facilities cannot include cable, closed circuit, or satellite televisions technologies unless a plan is in place for using the technologies for education and training purposes. Inmates can only have personal TV's if they participate in work or education programs. The restriction does not apply if education or work programs are not available or if the inmate is exempted from the work or education requirement. Inmates cannot have personal TV's for the first two months of confinement.

IV. RECREATIONAL ACTIVITIES

Weight-lifting. Weight-lifting is only allowed for inmates who are in good standing with the department and who are in either a work or education program. The restriction does not apply if an inmate is exempted from work or education, or if work or education is not available. Inmates who have assaulted a guard or inmate also cannot participate. Dietary supplements to increase muscle mass are prohibited, unless medically needed.

Other recreation. Use of recreational facilities or recreational equipment is limited to inmates who are in work or education programs. The restriction does not apply if the inmate is exempted from work or education requirements or if work or education is not available.

V. INDIGENCY

Indigency is defined as an inmate having less than \$10 for a period of 40 days. Inmates cannot receive more than \$75 per month from outside the prison. The department is only required to provide essential personal items such as toiletries to indigent offenders.

VI. FAMILY VISITATION LIMITATIONS

The following limitations are established for the family visitation program:

- only once every 30 days;
- no more than 48 hours;
- the inmate must have been married prior to conviction, although marriages before 7/1/95 may be exempted from this requirement;
- no family visitation in the inmate's first 12 months (if sentence of 3 years or more), or in the first 6 months (for shorter sentences);
- no family visitation if the inmate is not participating in an education or work program, unless the inmate is exempted or no work or education is available;
- additional restrictions are also established for the family visitation programs based on inmate conduct, infractions, and for maximum custody inmates or close custody inmates.
- no family visitation with children for inmates who have a history of a sex offense with children;
- family members with certain criminal histories are excluded from family visitation;
- all costs of the family visitation program are to be paid by the inmate.

VII. RESTRICTIONS ON INMATE NAME CHANGES

Inmates are not allowed to change their name if doing so will interfere with safe operation of the prison. Exceptions are made for name changes resulting from

marriage or for religious purposes. However, the inmate must use both the old and the new names while incarcerated.

VIII. INMATE HEALTH CARE CO-PAYMENTS

A \$3 co-payment is required for health care services that are inmate-initiated. There is no requirement if the visit is initiated by prison staff or if there is a serious health care need. Inmates must pay nominal charges for all over-the-counter medications. Indigent inmates are allowed to obtain health care services and over-the-counter medications without cost.

IX. INMATE WAGE DEDUCTIONS

Ten percent of inmate wages or gratuities are required to be placed in a special account for purposes of crime victims' compensation.

X. 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 and with the concurrence from the sentencing judge, can refer the offender to the work ethic camp and adjust time served.

XI. ILLEGAL ALIEN OFFENDER TRANSITION CAMP

An illegal alien offender transition camp program is established and eligibility requirements are outlined. The program will last between 60 and 180 days and must be operating by July 1, 1996. Offenders who agree to go to the transition camp are required to agree in writing prior to placement into the camp. Offenders participation in the transition camp are to be immediately transferred to the Immigration and Naturalization Services (INS) for deportation upon completion of the camp.

XII. REPORTS ON ILLEGAL ALIEN INMATES

The department must make quarterly reports to the Legislature on its costs of incarcerating illegal alien felons. The department must also seek federal funding to cover these costs.

XIII. ELIMINATION OF MANAGEMENT POSITIONS

- The department must cut all management positions by at least 20%.

- Recreational leader positions are cut by 50%.
- Overtime is reduced by 50% of the amount that was used in 1994.

XIV. 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 "hot bunking" and analyze how this concept can be implemented.

XV. CORRECTIONAL INDUSTRIES BOARD

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

XVI. INMATE LABOR

The correctional industries board will implement a plan that uses inmate work crews where feasible and practicable on construction projects within the Department of Corrections and Juvenile Rehabilitation Administration.

XVII. CORRECTIONAL INDUSTRIES AND MILK PRODUCTS

Correctional industries programs must obey many of the same state and federal laws that apply to private employers. Milk production will be subject to federal restrictions, and the milk processing must be regulated like other fully regulated handlers.

XVIII. PERIMETER SECURITY

The department is required to consider alternative perimeter security options that include high technology.

XIX. DEPARTMENT OF CORRECTIONS COST EFFICIENCY FOCUS GROUP

The department is directed to establish a focus group including one management person and one line staff member from each facility, and other selected vested individuals. The focus group will meet quarterly and make recommendations concerning improving operations and identifying cost efficiencies. The focus group is also given the responsibility of determining if weight-lifting should be restricted.

XX. LEGISLATIVE OVERSIGHT COMMITTEE

A 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 also required to oversee the focus group, oversee studies required in the act and review efficiency proposals for facilities for correctional industries to make sure the studies and proposals emphasize maximizing inmate employment rather than using higher technology. The committee is required to report to the Legislature on the department's cost savings and make recommendations for further savings.

XXI. ART AND CAPITAL CONSTRUCTION IN CORRECTIONAL FACILITIES

One-half of one percent of the capital budget can no longer be dedicated to art. This applies both to construction of department facilities and Juvenile Rehabilitation Administration facilities.

EFFECT OF SENATE AMENDMENT(S):

The Senate striking amendment eliminates or significantly changes several pieces of the engrossed bill including:

***Educational Targets:* The incremental increases in the funding for education programs, which were supported by an initial appropriation and a requirement that future Legislatures make future increases, are removed. The striking amendment establishes full participation as the goal and requires the department to prioritize available resources and prioritize offenders to achieve maximum participation.**

***Mandatory Education/Work Tracking/Placement:* The prescriptions requiring inmates with less than 8th grade reading level to be in half time education and**

half time work and the requirement that inmates with more than 8th grade reading level to be in full time work are removed. The striking amendment requires the department to assess all inmates, subject to certain limited exceptions, for both education levels and work skills, and to place the inmates in an appropriate program or combination of work and educational programming.

Indigent Inmates: The definition of indigent inmate and related provisions are removed.

Outside Money: The \$75 limit on how much money an inmate could receive from the outside each month is removed.

Extended Family Visitation Program: Several of the absolute prohibitions against certain inmates are eliminated. The striking amendment defines extended family visit and requires the department to develop rules, within certain parameters, relating to eligibility and conduct during the visits.

Mandatory Study of Six New Industries: The list of possible new correctional industries to be reviewed by the correctional industries board of directors is removed.

Inmate Work Crews: The requirement that the department develop a plan to use inmate work crews on all DOC and JRA construction projects is removed.

Increased Mandatory Wage Deductions: The increase from a 5 percent to 10 percent mandatory wage deduction for the purposes of crime victims compensation is removed.

Department Milk Industry: The requirement that the department's milk production and processing be operated as separate operations, be subject to the same regulations as private milk handlers, and be limited as to who it can sell to, is eliminated.

Administrative Cuts: The mandatory 20 percent management staff reductions, recreational leader cuts, and overtime reductions are removed. The Legislative Budget Committee study of staffing is retained. The striking amendment also requires a study of the feasibility and desirability of using inmates to support rec programs as a part of correctional industry aimed at recreation, health, and fitness programming.

Public Art: The exemption for correctional institutions and juvenile rehabilitation from the mandatory allocation of .5 percent of all capital expenditures on public art is removed, while the requirement that any art purchased under the statutory requirement must be from Washington artists is retained.

The emergency clause is deleted.

A null and void clause is added to the entire bill.

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 VonSteege, 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).

Votes on Final Passage:

Yeas 88; Nays 7; Excused 2

Nays: Cole, Dickerson, Mason, Rust, Sommers, Thibaudeau, Veloria

Excused: Lambert, K. Schmidt