

HOUSE BILL REPORT

SSB 6274

As Reported By House Committee On:
Corrections

Title: An act relating to supervision of sex offenders.

Brief Description: Providing for increased supervision of sex offenders for up to the entire maximum term of the sentence.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Roach, Quigley, Wood, Smith, Schow, Winsley, Oke, A. Anderson, Rasmussen, Haugen and McAuliffe).

Brief History:

Committee Activity:

Corrections: 2/20/96, 2/23/96 [DPA].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; Schoesler and D. Sommers.

Staff: Rick Neidhardt (786-7841).

Background:

1. Release and supervision of sex offenders by the Department of Corrections.

The Department of Corrections (DOC) supervises sex offenders, including some who are convicted of "sexually violent" offenses. Sexually violent offenses are a subset of the category of sex offenses.

DOC's discretionary decisions regarding the supervision of sexually violent offenders are to be based on considerations of public safety risk rather than the legal category of the sentences.

When a sex offender is about to be released to community placement, the offender's proposed residential location and living arrangements are subject to DOC's prior

approval, and DOC's restrictions may continue during the period of community placement.

When a sex offender's release is pending, DOC is required to notify certain individuals and agencies of the pending release. The individuals entitled to notice include the victim; any witnesses who testified against a violent offender; and persons specified in writing by the prosecutor.

Current law requires a sentencing judge to impose mandatory periods of supervision for sex offenders. The duration and nature of this supervision depends on whether or not the offender is being given a special sex offender sentencing alternative (SSOSA). A SSOSA sentence involves a suspended sentence that allows the offender to receive treatment in the community.

2. Supervision of SSOSA offenders.

As part of a SSOSA sentence, the judge must impose community supervision for the duration of three years, or the length of the suspended sentence, whichever is longer.

An offender on community supervision must obey the directions of DOC, including reporting as directed to a community corrections officer (CCO), remaining within prescribed geographical boundaries, notifying the CCO of any changes in address or employment, and paying a supervision fee assessment. Although this statute would allow DOC to impose additional conditions beyond those just listed, DOC does not in fact do so, having been advised that doing so could violate an offender's constitutional rights in regard to double jeopardy.

3. Supervision of non-SSOSA sex offenders.

For non-SSOSA sentences, a sentencing judge must impose the form of supervision known as community placement. If the crime was committed after July 1, 1990, the duration of the community placement is to be for two years, or the length of earned early release time, whichever is longer.

Community placement has two components, community custody and post-release supervision. If an offender is released early from confinement due to earning early release, then community placement begins with a period of community custody, which lasts for the period of earned early release. Any time remaining after that point is served as post-release supervision. The period of community custody involves more significant restrictions on the offender. Most importantly, during this period DOC retains significant control over the offender's activities, DOC administratively addresses any violations of DOC's rules, and DOC can impose punishment up to returning the offender to prison for the duration of the judge's imposed sentence. Post-release supervision is in essence the same as community supervision.

4. Release of civilly committed sexually violent predators.

Current law authorizes the indefinite civil commitment of sexually violent predators. A committed predator may be unconditionally discharged from commitment only if a court determines the person is no longer likely to engage in predatory acts of sexual violence if released.

Alternatively, a committed predator may be conditionally released to an alternative less restrictive than total commitment. This occurs if a court determines (1) that conditions less restrictive than full commitment exist under which the person would no longer be likely to engage in predatory acts of sexual violence; and (2) that conditional release is in the best interest of the person and will adequately protect the community.

Certain additional minimum conditions must also be met before a conditional release may be ordered. One of these additional minimum conditions is that housing exists that is sufficiently secure to protect the community.

A concern exists that these minimum conditions on the housing of conditional released sexually violent predators do not adequately protect the public.

5. Public notification about sex offenders.

a. In general. Public agencies are authorized to inform the public about sex offenders when doing so is necessary for public protection. This notification usually is left to the discretion of local law enforcement agencies. If an agency decides to notify the public, the agency is required to make a good faith effort to give the public at least 14 days notice before the offender's release.

In order for local law enforcement agencies to have the necessary information to make this decision, current law requires a number of state agencies to give advance notice to local law enforcement agencies prior to releasing sex offenders from confinement. For example, DOC and the Juvenile Rehabilitation Administration are each required to give at least 30 days' advance notice to a local law enforcement agency before releasing a sex offender.

b. Limit on authority to notify the public. It has been argued that current law limits a local law enforcement agency's notification authority to cases where the agency has received information on the offender from one of these statutorily mandated sources of information (e.g., the Department of Corrections). Under this argument, a local law enforcement agency could not notify the public if it learned reliable information from any other source.

c. Limits on authority for notification regarding SSOSA and SSODA offenders. Another potential limitation on notification of the public is statutory language that refers to sex offenders who are being "released." Some sex offenders, however, are not "released" from confinement, because they have not served any confinement time. Specifically, adult sex offenders who are given a special sex offender sentencing alternative (SSOSA), and juvenile sex offenders who receive the similar special sex offender disposition alternative (SSODA), are given suspended sentences and do not necessarily spend any time in confinement. When a judge imposes a SSOSA or SSODA sentence, the judge has determined that the offender can be treated in the community without endangering public safety. Sometimes, however, one of these offenders is deemed by local law enforcement agencies to be dangerous enough to warrant public notification.

In at least one case, a court has construed the "released" language to mean that community notification is not authorized for a person who has been given a SSODA disposition.

d. Limitations on information regarding SSODA offenders. Although local law enforcement agencies receive information from many different state agencies regarding sex offenders, they do not currently receive information on SSODA offenders from the juvenile courts.

Summary of Amended Bill:

1. Release and supervision of sex offenders by DOC.

Discretionary decisions regarding the supervision of all sex offenders, not just those who are sexually violent, are to be based on considerations of public safety risk. DOC's discretionary decisions regarding sex offender release plans must similarly be based on considerations of public safety risk.

DOC must implement policies addressing sex offender release plans. The policies must create a formal process that will allow victims, witnesses, and other interested people to comment to DOC on inmate safety risks. The policies must also require that notice of a sex offender's proposed residence be given to any person who formally requests this notice from DOC at least 60 days prior to the expected release date.

2. Supervision of SSOSA offenders.

Offenders who receive suspended SSOSA sentences are placed on community custody rather than community supervision. The duration of this period is not changed.

SSOSA offenders can be required to comply with appropriate conditions imposed by DOC, such as not having contact with specific individuals or classes of individuals. No other indication is given as to what constitutes appropriate conditions. Conditions may be imposed before or during the term of community custody.

DOC administratively addresses violations of the conditions of community custody. When DOC finds a violation occurred, DOC can either impose up to 60 days in a county jail for each violation, or may recommend that the court revoke the suspended sentence.

3. Supervision of non-SSOSA sex offenders.

Non-SSOSA sex offenders are placed on community custody (instead of community placement) for up to three years (instead of two years) or the period of earned early release, whichever is longer.

DOC may impose appropriate conditions on these sex offenders, including prohibiting contact with individuals or classes of individuals. No other indication is given as to what constitutes appropriate conditions. Conditions may be imposed before or during the term of community custody.

DOC administratively addresses violations of any conditions during community custody. When DOC finds a violation occurred, DOC can impose various penalties. If the maximum time of confinement has not yet expired, DOC can impose a penalty up to and including returning the offender to prison until the expiration of this maximum time of confinement. If the maximum time of confinement has already expired, DOC can impose up to 60 days confinement in a county jail for each violation.

The court may increase or add to conditions of community custody at any time before community custody is completed, if it finds public safety would be enhanced. The conditions may not be extended any longer than the statutory maximum sentence (e.g., up to life for Class A felonies). Violations during this extended period of time beyond community custody time are treated as contempt of court, which can trigger a fine of up to \$5,000 or confinement of up to one year in a county jail.

Provision is also made for allocating financial responsibility between DOC and local jurisdictions with respect to the costs of incarcerating offenders who have violated the conditions of their community custody.

4. Release of civilly committed sexually violent predators.

Additional measures for the protection of public safety are adopted with respect to the conditional release of sexually violent predators.

- a. Rules on housing providers. DSHS must adopt rules establishing qualifications of housing providers for conditionally released sexually violent predators. The rules must address, at a minimum, the public safety concerns related to (a) the proximity of vulnerable populations; (b) the appropriate level of security, including buildings, grounds and staffing requirements; and (c) the minimum training of staff.
- b. Additional conditions for conditional release. Prior to conditionally releasing a sexually violent predator, the court must determine that the housing provider meets the qualifications spelled out in the DSHS rules. Orders of conditional release must also prohibit the person from living within a specified distance of the current residence of any victim, if it is necessary to ensure public safety. The court must also order DOC to investigate and recommend conditions to judge, including proximity to prior victims, schools, child care centers, or other facilities with vulnerable populations.

5. Public notification about sex offenders. A number of possible limitations on public notification about sex offenders are removed, as indicated in the following paragraphs.

Clarification is provided that public notification may occur even when the local law enforcement agency did not receive its information from a public agency that was required by law to report information to the local law enforcement agency.

The authority is explicitly expanded to include not only sex offenders who are being released from confinement, but also SSOSA and SSODA offenders who are allowed to remain in the community as part of their original sentences. When a local law enforcement agency determines such an offender merits public notification, the agency shall make a good faith effort to notify the public within 30 days after the offender is sentenced.

When a juvenile court imposes a SSODA disposition on a juvenile offender, the court shall send written notice of the disposition, at the earliest possible date and no later than five days after disposition, to the local law enforcement agencies in the area where the juvenile will reside.

Juvenile courts are authorized to release information about a sex offender when the information is necessary and relevant to public safety.

Amended Bill Compared to Substitute Bill: The amended bill adds the provisions which are summarized above in sections (1), (4), and (5) of this bill report.

The amended bill adds the requirement that DOC notify the judge and prosecutor whenever it imposes a sanction for a violation of community custody by an offender serving a SSOSA sentence.

The amended bill also makes a technical correction.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (on unamended bill) This bill was drafted in response to a recent gathering of experts on sex offender supervision. A need exists at the supervision stage for better consideration of offender risk. The third year after release is when most re-offenses occur. We need more tools for supervising sex offenders. DOC needs to be able to impose restrictions after sentencing based on information that arises during incarceration. It is important for courts to have power to extend conditions beyond the initially imposed period of supervision. DOC needs greater flexibility. Sex offenders on the street can be dangerous. The bill encourages quick resolution of violations.

Testimony Against: (on unamended bill) SSOSA sanctions should not disrupt an offender's treatment plans. Courts need to know about DOC sanctions on SSOSA offenders because the courts have the ultimate responsibility for deciding whether to revoke SSOSA sentences. Local jurisdictions will no longer have control over who is placed in local jails nor for how long.

Testified: (on unamended bill) Senator Jeanine Long, prime sponsor; Mike Patrick, Washington State Council of Police Officers (pro); Tom McBride, Washington Association of Prosecuting Attorneys (with concern); Dave Savage, Department of Corrections (pro); and Kurt Sharar, Washington State Association of Counties (with concern).