

# HOUSE BILL REPORT

## HB 2781

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

**Brief Description:** Imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

**Sponsors:** Representatives Hurst, Morrell, Kelley, Wallace, Pearson, Ericks, Klippert, Conway, Haigh, Roach and Simpson; by request of Department of Corrections.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/19/10, 1/22/10 [DPS].

**Brief Summary of Substitute Bill**

- Requires an offender to serve a mandatory minimum term in total confinement for a violation of community custody against an employee of a law enforcement agency.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Kirby and Ross.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Appleton and Goodman.

**Staff:** Yvonne Walker (786-7841).

**Background:**

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*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.*

"Community custody" means that portion of an offender's sentence of confinement, served in the community subject to controls placed on the offender's movement and activities by the Department of Corrections (DOC).

The DOC must supervise all felony offenders sentenced to community custody that are classified as high risk to offend and certain other felony offenders. The DOC must supervise all sex offenders, including those whose sole offense is failure to register, regardless of risk. The DOC must also supervise offenders classified as: (1) dangerous mentally ill offenders; (2) those with indeterminate sentences; (3) those required to be supervised under the Interstate Compact for Adult Offender Supervision; and (4) offenders sentenced to special sentencing alternatives.

While on community custody, offenders are subject to a variety of conditions. For example, unless waived by the court, the terms of an offender's community custody must include:

- reporting to a community corrections officer;
- working at the DOC approved education, employment, or community restitution;
- refraining from possessing or consuming controlled substances;
- paying supervision fees; and
- obtaining prior DOC approval for residence location and living arrangements.

In addition, the court may impose a variety of conditions of community custody, including:

- remaining within, or outside of, specified geographical boundaries;
- refraining from contacting the victim or a specified class of individuals;
- participating in counseling;
- refraining from consuming alcohol; or
- complying with crime-related conditions.

The DOC is also authorized to impose conditions of community custody as long as they do not conflict with any court-ordered conditions. The conditions the DOC may order include electronic monitoring.

If the offender violates the conditions of community custody, the offender may be required to serve up to 60 days of confinement for each violation. In lieu of confinement, an offender may be sanctioned with work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; or any other sanctions available in the community.

An offender accused of violating a condition of community custody is entitled to a hearing before the DOC before sanctions are imposed. The hearing is considered a disciplinary hearing and is not subject to the requirements of the Administrative Procedure Act. For offenders not in total confinement, the hearing must be held within 15 days but no less than 24 hours, after notice of violation.

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### **Summary of Substitute Bill:**

A mandatory minimum term of imprisonment is established for a violation of community custody against an employee of a law enforcement agency.

An offender must be sanctioned one year in total confinement if he or she violates community custody by assaulting a law enforcement officer, an employee of a law enforcement agency, or an employee of the DOC who was performing his or her official duties at the time of the assault. The sanction must be served consecutively to any other sanction for any other violation. Under no circumstances may the sanction or period of supervision exceed the maximum sentence allowed.

**Substitute Bill Compared to Original Bill:**

A technical amendment was made.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Assault on an officer is a serious crime. If an assault occurs against a law enforcement officer or a DOC officer, the DOC felt they needed more latitude to punish an offender. This bill is a good first step but the penalty for assault against an officer should be increased to a strikeable offense under the Persistent Offender statute.

There is no accountability for offenders that are out on the street on community custody. It can take days in order to get a secretary's warrant for an offender that is violating community custody. In Hawaii they have a swift penalty of an immediate 48-hour jail sentence for community custody violations. When an offender in custody commits an assault against an officer, he or she can be violated through an internal DOC process. An offender on community custody who violates community custody must go before a hearings board and can be sanctioned up to 60 days.

(With concerns) The policy of this bill is fine but it does have due process issues. Administrative judges now hear community custody violations for supervision. However, during this process the offender does not have the opportunity to have counsel present. In addition, any offender that assaults an officer can be charged with a new crime under current law and can face felony prosecution. The question is whether there is enough due process in the administrative hearings process to hold an offender for a year. Too much sentence with too little due process. There is no requirement for proving the violation beyond a reasonable doubt.

(Opposed) Offenders on community custody have already served their confinement sentence. They are now serving a follow-up period of community supervision in the community. An offender that has been accused of violating community custody will now have to serve one year of incarceration and his case will be heard by an administrative judge where no counsel is present on behalf of the offender.

**Persons Testifying:** (In support) Representative Hurst, prime sponsor; Jamie Daniels, Washington Council of Police and Sheriffs; Mark Lann, Washington Council of Police and Sheriffs; and Dianne Ashlock, Department of Corrections.

(With concerns) Jean Soliz-Conklin, Sentencing Guidelines Commission.

(Opposed) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** LeRoi Brashears, First Amendment Social Action Commission; and Shankar Narayan, American Civil Liberties Union of Washington.