

HOUSE BILL REPORT

HB 2711

As Reported By House Committee On:
Corrections

Title: An act relating to the illegal alien offender program.

Brief Description: Creating an illegal alien offender program.

Sponsors: Representatives Radcliff, Ballasiotes, Sheahan, Robertson, L. Thomas, Hickel, McMahan, Sherstad, Goldsmith, Schoesler, Hankins, D. Sommers, Campbell, Silver, Cooke, Mulliken, Blanton, McMorris and Elliot.

Brief History:

Committee Activity:

Corrections: 1/24/96, 1/31/96 [DPS].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; Schoesler and D. Sommers.

Minority Report: Do not pass. Signed by 1 member: Representative Tokuda, Assistant Ranking Minority Member.

Staff: Rick Neidhardt (786-7841).

Background: Over 1,500 non-U.S. citizens are incarcerated in Washington's prison system. Approximately half these inmates are the subject of detainers issued by the federal Immigration and Naturalization Service, and most of these inmates' detainers are on the basis that they are illegal aliens (i.e., they entered the country illegally). The issuance of a detainer is a federal administrative action that precedes the issuance of a final order of deportation.

Under current practice, illegal alien offenders generally serve their prison sentences with the Department of Corrections in the same manner as other offenders do. After an illegal alien offender completes his or her sentence, though, any illegal alien who is the subject of an INS detainer order is released directly to the federal Immigration and Naturalization Service (INS) for deportation processing.

One unique procedure exists for alien offenders at DOC. If the federal government issues a final order of deportation on a DOC inmate, DOC can give the inmate a conditional release to the custody of the INS at any time prior to the expiration of the inmate's term of confinement. These conditional early releases, however, can occur only if the department determines that the release is in the best interest of Washington State, and only if further the prosecutor and sentencing judge concur. This procedure has been used only rarely.

Last year the Legislature directed DOC to develop an implementation plan for an alien offender camp. The legislative goals for this camp were to expedite deportation of alien offenders; reduce daily costs of incarceration; enhance public benefit through emphasizing inmate work; restrict access to education programs and privileges; and maximize use of non-state resources for the costs of incarceration. The Legislature stated the camp was to begin operation by January 1, 1997.

The department presented its implementation plan to the Legislature on December 1, 1995.

Summary of Substitute Bill: DOC is directed to implement an illegal alien offender program by July 1, 1997.

The legislative goals for the program are to

- (1) expedite deportation of illegal alien offenders;
- (2) reduce daily costs of incarceration;
- (3) centralize confinement of illegal alien offenders in order to better address deportation issues;
- (4) emphasize work programs rather than education programs;
- (5) restrict illegal alien offenders' access to privileges; and
- (6) maximize non-state resources for incarceration costs.

Summary of program: The Department of Corrections (DOC) will administratively place deportable illegal alien offenders in a centralized program that will allow for the coordinated and expedited extradition of illegal alien offenders.

The program will emphasize work, to include general labor such as grounds clean-up and facilities maintenance. The work will be paid as a Class III correctional industry, which involves pay of between \$30 and \$50 per month. Education and treatment components are not to be offered unless they are necessary for an offender to understand and follow DOC's directions and standards.

The program is to last between 120 and 180 days.

The program is to be located in a DOC facility or facilities, although the program may be located elsewhere if the DOC contracts with a private vendor or another governmental entity for program operation.

Eligibility criteria: An offender sentenced to the DOC is eligible for the illegal alien offender program if

- (1) the Immigration and Naturalization Service (INS) has issued a detainer for the offender's deportation;
- (2) the offender is not a lawful permanent resident of the U.S.;
- (3) the offender's sentence is not more than 36 months;
- (4) the offender has no current or previous convictions for sex offenses or violent offenses other than manufacturing, possession, delivery, or intent to deliver a controlled substance;
- (5) the offender has not previously been placed in the illegal alien offender program; and
- (6) the offender is at least 18 years old.

Placement criteria: The DOC is directed to place illegal alien offenders in the program, subject to capacity, if the following placement criteria are met:

- (1) the offender is physically and mentally able to complete the program;
- (2) the offender's custody level allows placement in the program;
- (3) the offender agrees in writing to the program's terms and conditions; and
- (4) the offender has at least 120 days remaining in the sentence.

Effect of placement on offender's sentence: Placement in the illegal alien offender program supersedes the judge's sentence as to the terms of confinement, including any special sentencing alternative such as the work ethic camp or the drug offender sentencing alternative.

Termination from program: The DOC may terminate from the illegal alien offender program any offender (1) who violates the program's terms or conditions, or (2) who is found no longer to meet the eligibility or placement criteria.

Upon termination, the offender is returned to the main inmate population to serve the sentence imposed by the judge, with two caveats.

Caveat 1: If the judge's sentence included a term of confinement plus a recommendation for the work ethic camp, the offender serves the same term of confinement but in the main inmate population.

Caveat 2: If the judge's sentence invoked the drug offender sentencing alternative (DOSA), which necessarily includes the setting of a sentence based on

the mid-point of the standard range, the offender serves this term of confinement in the main inmate population.

The same effect occurs for an offender who meets the eligibility criteria but does not meet the placement criteria.

Completion of program: An offender who successfully completes the program is given a conditional release and turned over to the INS for deportation. The unserved portion of the term of confinement is tolled. The conditional release continues until the expiration of the offender's statutory maximum sentence.

At the time of the conditional release, DOC issues a warrant for the offender's arrest within the state of Washington. The warrant expires along with the expiration of the offender's term of conditional release. An offender picked up on this warrant is returned to the department to serve the remaining portion of the tolled sentence.

Federal Assumption of Jurisdiction: If the federal government takes into its custody illegal alien offenders incarcerated in Washington state, then the DOC is authorized to turn the offenders over to the federal government and to cease operation of the program.

Substitute Bill Compared to Original Bill: The original bill set the implementation date for the illegal alien offender program at January 1, 1997. The original bill provided that work performed by the offenders in the program would be unpaid.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The illegal alien offender program is closely based in many ways on the work ethic camp. The emphasis in the program is on work rather than programming. A lot of money is currently being spent on rehabilitating illegal alien offenders, even though they are going to be deported from the country upon completion of their sentences. The bill balances the need for illegal alien offenders to serve prison time with the need for expedited deportation of nonviolent offenders. The bill will free up prison beds for violent offenders. The INS has recently increased the number of agents available to process these offenders. The DOC is concerned about the timing of the implementation date, the unpaid nature of the offenders' work, the difficulties involved in housing offenders ethnically, and with some of the eligibility and placement criteria.

Testimony Against: Illegal aliens should not be given a break on their sentences. The federal government should be paying the state for incarcerating these offenders. This problem should be solved by suing the federal government, not by shortening sentences. We're sending them home just to save money. Different treatment of illegal alien offenders raises ethical concerns and has racial implications. Work should be paid so offenders can have a decent standard of living in the prison. We need to honor the integrity of all people, even those needing punishment.

Testified: Representative Renee Radcliff, prime sponsor; Jeff Sullivan, Yakima County Prosecuting Attorney (con); Bernie Warner, Department of Corrections (pro, with concerns); and Kathleen Russell, Washington Association of Churches (con).