

HOUSE BILL REPORT

HB 2010

As Reported By House Committee On:

Corrections
Appropriations

Title: An act relating to corrections.

Brief Description: Revising corrections provisions.

Sponsors: 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)].

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).

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; Procunier 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 Substitute Bill:

Inmate Responsibilities:

Inmates that have attained an eighth-grade level of competency are required to work a regular Department of Corrections work day if work programs are available. All inmates with lower than an eighth grade level of competency are required to attend available basic education classes half-time and must work in an available Correctional Industries job half-time. Inmates with mental handicaps, those participating in special mental health treatment programs, those in protective custody, on death row or in close-custody confinement, as well as illegal alien offenders, are exempted from the education and work requirements.

Inmates are required to pay the cost for all college two-year associate of arts degrees or higher education degree programs.

A family visitation program is established and the terms and conditions of eligibility are outlined. Inmates who are married while in prison are not allowed to participate in the family visitation program with their spouse. However, inmates married in prison prior to July 1, 1995, may continue to be eligible to participate in the family visitation program. All inmates are required to work a regular Department of Corrections work day or to participate in an available education program to be considered eligible for family visits.

The department is required to implement a uniform statute for the elimination of obscene, sexually explicit, erotic, and excessively violent material from all prisons.

All inmates are required to work a standard Department of Corrections work day if jobs are available or to participate in an available education program to be eligible for personal television privileges. All cable television systems in prisons scheduled to be constructed must be paid for by inmates. An education plan that includes the use of cable television programming must be approved as part of the construction plan prior to the installation of cable television.

Inmates are required to participate in available work or educational programs in order to be eligible for recreational privileges.

The definition of indigent inmate is modified. Inmates must have less than \$10 in their savings account for a period of 40 days to be considered indigent. No inmate is allowed to receive more than \$75 per month from outside the prison.

Inmates are not allowed to change their name in prison unless they are married or change it for religious reasons. If the name change is approved by the Department of Corrections, the inmate must use both the old name and the new name together while incarcerated.

Non-indigent inmates are required to pay a \$3 co-pay each time they use health care services and must pay for all over the counter drugs.

If an inmate is working in a Class I, Class III, and Class IV Correctional Industries job, he or she must have 10 percent deducted from his or her wages to pay for crime victims' compensation.

Job performance standards are required for all Correctional Industries jobs.

Department of Corrections Cost Efficiencies:

Eligibility for the Work Ethic Camp is modified to allow more inmates to participate.

An illegal alien offender transition camp is established. Illegal alien offenders with sentences ranging from 12 months and a day to 36 months are eligible for incarceration in the illegal alien offender transition camp. The alien offender must voluntarily choose to participate in the program. The sentencing judge is given the discretion whether to recommend that an eligible offender be placed in the camp. Alien offenders receive a three to one conversion ratio on their sentence if they successfully participate. All illegal alien offenders who participate are required to be turned over to the Immigration and Naturalization Service for deportation at the time of their release. The Department of Corrections is required to seek federal assistance for the incarceration of illegal alien offenders.

The Department of Corrections is required to reduce the 11 levels of the management staff by 20 percent, the recreational leader staff positions by 60 percent and all other divisions, with the exception of Correctional Industries, by 5 percent.

The legislative budget committee is required to conduct an audit of the Department of Corrections 1995-1997 biennium budget request to identify cost comparisons savings and items that, if purchased, would replace inmate manual labor.

The Correctional Industries board of directors is required to consider new work programs to enhance Class I and Class II inmate jobs. These include cooks' training,

use of inmate work crews to repair juvenile facilities, a recycle program, self sufficiency farming, and construction of portable migrant farm worker housing.

All construction for new adult or juvenile facilities must employ inmate labor. New corrections facilities must consider perimeter security options that do not include guard towers in the construction plan. The Department of Corrections is exempted from participating in the requirement that one-half of one percent of the amount appropriated for construction projects be expended by the Washington State Arts Commission.

The legislative budget committee is required to review the cost efficiency of contracting out all corrections health care services. The study is required to evaluate contracting out without lowering employees wages. The legislative budget committee is also required to study the corrections marine fleet operations.

A corrections cost-efficiency and public safety focus group is established. The group is made up of correctional officers, management, relevant professionals, and members of the public. The focus group is given the authority report to the Legislature on cost efficiency, public safety, and prison design and other pertinent issues. They are also given the responsibility for determining if weight lifting will be allowed in the prisons.

A joint committee on cost-efficiencies oversight is also established to oversee the implementation of the act. Membership, powers, durations, and terms of the committee are established. The committee is required to report to the Legislature by December 12, 1996, on cost savings.

Substitute Bill Compared to Original Bill:

- All references to an eight hour work day are removed and replaced with a standard department of corrections work day.
- All references to privileges based on participation in work or education programs are modified to include availability of the jobs or education programs.
- The requirement that inmates below fifth grade level of comprehension must attend school full time is removed and replaced with the requirement all inmates below an eighth grade level must attend available basic education classes half time and available work half time.
- All privileges and mandatory programs are qualified by exempting physically and mentally disabled and those with mental conditions.

- References to limitations of welfare as a result of children conceived during a family visit are removed.
- The definition of "immediate family" is narrowed and inmates are excluded from the visitation program who are adopted by another inmate.
- The frequency and duration of family visits are modified allowing inmates to visit once every thirty days and for up to forty-eight hours.
- Inmates with less than a three year sentence can be eligible for a family visit after the first six months of their sentence. If their sentence is for more than three years it is set at 12 months.
- Mandatory random urine analysis for inmates who participate in the family visitation program is eliminated.
- The requirement restricting weight lifting to only those inmates on a weight lifting team is eliminated. The cost efficiencies focus group is given the authority to make the decision about the use of weight lifting in the prisons.
- Correctional sergeants are excluded from the departmental staff reductions.
- Recreational staff leaders are reduced 60 percent rather than 75 percent and the department is not allowed to replace the positions.
- The use of 20 percent inmate work crews on new construction projects is modified to include a percentage that is established by the Correctional Industries advisory board.
- Contracting language for medical services that allows the termination of classified employees is eliminated.
- The cost efficiency focus group is allowed to meet quarterly.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: 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.

Testimony Against:

[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.

[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.

[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.

[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.

Testified: 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).

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).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Corrections:

Staff cuts. In the first substitute bill, there was a 5 percent reduction of all DOC staff except for correctional industries. This provision has been deleted. The 20 percent reduction in management is still in place.

Recreational leaders. In the first substitute bill, there was a 60 percent cut in the number of recreational leaders. This has been changed to a 50 percent cut.

Costs of higher education. In the first substitute bill, inmates were required to pay for 30 percent of all higher education costs.

In the second substitute bill, inmates must pay a percentage of the costs of community college vocational programs. The percentage is to be determined by the department. For all other higher education programs, the inmates must pay the full tuition cost.

Correctional industries. The second substitute bill adds a provision requiring correctional industries to meet many of the same provisions of state and federal law that already apply to private employers. The milk program must meet federal standards. The legislative oversight committee is to review proposals for new facilities to see that the use of inmate labor is maximized.

Legislative Budget Committee (LBC) studies. In the first substitute bill, it was the LBC who was to carry out a number of studies of DOC operations. In the second

substitute bill, all but one of these studies have been assigned to other agencies. The remaining study for the LBC concerns DOC's staffing ratio. A null and void clause has been attached to this study.

DOC's food production. A study is to be done of the potential cost savings that could result from expanding DOC's meal planning, food purchasing, and food distribution into a state-wide food purchasing and distribution network for all state institutions.

Development of education programs. For offenders testing at or below the 8th grade level, DOC is required, within available funds, to provide education programs, subject to the following schedule: programs must be provided for at least 25 percent of these offenders by July 1, 1996, for at least 50 percent of these offenders by July 1, 1997, for at least 75 percent of these offenders by July 1, 1998, and for all of these offenders by July 1, 1999.

Additional definition. A definition of "erotic" is provided for purposes of the prohibition against inmates possessing certain magazines, films, or other materials.

Use of inmate labor in prison construction. The first substitute bill required construction firms who were building facilities for DOC or JRA to contract with DOC to include inmate labor in these projects. The second substitute bill changes this provision, so that DOC is required to implement a plan allowing for inmate labor on these projects when use of inmate labor is feasible and practical.

Illegal alien offender transition camp. The implementation date was delayed from October 30, 1995, to July 1, 1996.

Night-time classes. The first substitute bill provided that education was to be offered in the evenings so that inmates could work during the day. The second substitute bill removes this language.

A number of provisions were clarified and re-organized.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: 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: 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: 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).