

# SENATE BILL REPORT

## SHB 2711

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As Reported By Senate Committee On:  
Human Services & Corrections, February 23, 1996  
Ways & Means, February 26, 1996

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

**Brief Description:** Creating an illegal alien offender program.

**Sponsors:** House Committee on Corrections (originally sponsored by 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:** Human Services & Corrections: 2/20/96, 2/23/96 [DPA-WM, DNPA].

Ways & Means: 2/26/96 [DPA (HSC)].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.  
Signed by Senators Hargrove, Chair; Franklin, Vice Chair; Long, Schow, Smith and Zarelli.

**Minority Report:** Do not pass as amended.  
Signed by Senators Kohl, Prentice and Thibaudeau.

**Staff:** Andrea McNamara (786-7483)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Human Services & Corrections.  
Signed by Senators Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Fraser, Hargrove, Hochstatter, Johnson, Long, McDonald, Pelz, Quigley, Roach, Sheldon, Snyder, Spanel, Strannigan, Sutherland, West and Winsley.

**Staff:** Bryon Moore (786-7726)

**Background:** Last year, the Legislature directed the Department of Corrections to develop an implementation plan for an alien offender camp. The legislative goals specified for the camp included expediting the deportation of alien offenders; reducing the daily costs of incarceration; enhancing public benefit through emphasis on work programs and restricting access to education programs and other privileges; and maximizing the use of non-state

resources for the costs of incarcerating alien offenders. The Legislature identified January 1, 1997, as the deadline for beginning operation of the camp.

In December, 1995, the department presented a report to the Legislature which included its implementation plan and identified a number of legal issues requiring further legislative direction or authorization. Issues identified in the report needing further legislative action include the following: (1) statutory authority for the department to modify sentences imposed by the court; (2) clarification of the specific classifications of alien offenders subject to the program; (3) statutory flexibility for siting the program in the most cost-efficient locations, including the possibility of privatization or a partnership with the federal or local governments; (4) statutory authorization and clarification necessary to minimize possible constitutional challenges to the program, including challenges based on due process, equal protection, cruel and unusual punishment, and federal supremacy; and (5) statutory authority to release all illegal alien offenders to the custody of the federal government if the state prevails in its current suit against the United States Attorney General.

This bill seeks to give the additional authority and direction to the department necessary for implementing the alien offender program consistent with the stated goals of the program.

**Summary of Amended Bill:** The Department of Corrections is directed to implement an illegal offender program by July 1, 1997, to meet specified goals.

The department is required to place illegal alien offenders who meet the specified eligibility and placement criteria into a centralized alien offender program that allows for the coordinated and expedited deportation of illegal alien offenders.

The program lasts 120 to 180 days and is located in one or more current department facilities, although the program may be located elsewhere if the department contracts with a private vendor or another government entity for program operation.

The program must emphasize work, including general labor such as grounds clean-up and facility maintenance, and participating offenders are paid Class III correctional industry gratuities. Education and treatment programs are limited to those necessary for offenders to understand and follow the department's directions and standards.

An offender sentenced to the department is eligible for the illegal alien offender program if he or she meets the following criteria: (1) the Immigration and Naturalization (INS) has issued a detainer for the offender's deportation; (2) the offender is not a lawful permanent resident of the United States; (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 certain drug offenses; (5) the offender has not previously been placed in the illegal alien offender program; and (6) the offender is at least 18 years old.

The department must place all eligible illegal alien offenders in the program, subject to capacity, if the following placement criteria are met: (1) the judge has not explicitly prohibited placement as part of the judgment and sentence; (2) the offender is physically and mentally able to complete the program; (3) the offender's custody level allows placement in the program; (4) the offender agrees in writing to the program's terms and conditions; and (5) the offender has at least 120 days remaining on his or her sentence.

Unless a judge explicitly prohibits placement in the program, 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.

The department may terminate from the program any offender who violates the terms or conditions of the program or who is subsequently found not to meet the eligibility or placement criteria. Upon termination, an offender must be returned to the main inmate population to serve the sentence imposed by the judge. Terminated offenders are not eligible to return to special sentencing alternatives such as the work ethic camp or the drug offender sentencing alternative, and the manner in which any special sentencing alternatives are to be converted is specified. The same effect occurs for an offender who meets the eligibility criteria but does not meet the placement criteria.

Illegal alien offenders who complete the program are given a conditional release and turned over to the INS for deportation. The unserved portion of the sentence is tolled and the conditional release status continues until the expiration of the offender's statutory maximum sentence.

At the time of the conditional release, the department will issue a warrant for the offender's arrest within the state of Washington. The warrant expires at the end of the statutory maximum sentence, along with the conditional release. Any offender arrested on the warrant is returned to the department to serve the remaining portion of the tolled sentence.

If the federal government agrees to take into custody all illegal alien offenders incarcerated in the state, the department is authorized to release the offenders and cease operation of the program.

**Amended Bill Compared to Substitute Bill:** The amendment gives courts the ability, at the time of sentencing, to prohibit placement of an otherwise eligible offender by explicitly indicating the prohibition on the judgment and sentence.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For (Human Services & Corrections):** The parameters of the program are similar to the Work Ethic Camp, in terms of eligible offenses and sentence lengths, which already provide for reduced sentences under certain circumstances. This program would free up many beds within the general prison population to house more violent offenders.

**Testimony Against (Human Services & Corrections):** Illegal alien offenders should not serve less time in prison solely on the basis of their status as illegal aliens: when a crime has been committed, victims and communities affected by the crime have a legitimate expectation that the offender will receive a just punishment, not one that is determined by the offender's status as an illegal alien. Judges should have the ability to prohibit placement in the program if prosecutors can show the reduced sentence is not appropriate under the individual

circumstances of the offender. This program does not provide a significant enough disincentive against return. Some offenders may view the short sentence as an acceptable cost of doing business.

**Testified (Human Services & Corrections):** Representative Rene Radcliff, original prime sponsor; Bernie Warner, Assistant Director for Policy, Department of Corrections; Tom McBride, WA Association of Prosecuting Attorneys (con).

**Testimony For (Ways & Means):** This legislation could save the state a substantial amount of money.

**Testimony Against (Ways & Means):** The provisions related to giving the court the ability to prohibit placement of an otherwise eligible illegal offender could reduce the potential savings.

**Testified (Ways & Means):** Tom Rolfs, Department of Corrections.