

# HOUSE BILL REPORT

## E2SHB 1252

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**As Passed House:**

March 16, 1999

**Title:** An act relating to the supervision of offenders in the community.

**Brief Description:** Enhancing supervision of offenders.

**Sponsors:** By House Committee on Criminal Justice & Corrections (Originally sponsored by Representatives Ballasiotes, Lovick, McDonald, O'Brien, Cooper, Bush, Veloria, Kessler, Poulsen, Dickerson, McIntire, Scott, Edmonds, Wood, Conway, Cody, Rockefeller, Tokuda, Hurst, Santos, Haigh, Kenney, Campbell, Wolfe and Lantz; by request of Governor Locke).

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 2/2/99, 2/17/99 [DPS];

Appropriations: 3/1/99, 3/6/99 [DP2S(w/o sub CJC)].

**Floor Activity:**

Passed House: 3/16/99, 96-0.

### Brief Summary of Second Substitute Bill

- Expands the list of offenders for which a mandatory term of community custody is required, and requires the Sentencing Guidelines Commission to establish community custody ranges for crimes based on the principles of the Sentencing Reform Act and taking into account funds available for community custody.
- Authorizes the court to order the Department of Corrections to complete risk assessment reports on all felony offenders except those subject to a sentence of death or life without possibility of release.
- Authorizes the courts to impose affirmative conditions on offenders being sentenced to a term of community custody, and authorizes the Department of Corrections to impose additional conditions, including affirmative conditions, on offenders serving a term of community custody based on risk to community safety.
- Authorizes the Department of Corrections to sanction violations of community custody administratively.
- Converts the two-year community supervision term that may be ordered by the court for offenders sentenced under the first-time offender waiver to a one-year term of community custody.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

**Staff:** Jean Ann Quinn (786-7310).

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### 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 Criminal Justice & Corrections. Signed by 31 members: Representatives Huff, Republican Co-

Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

**Staff:** Dave Johnson (786-7154).

**Background:**

*Purposes of the Sentencing Reform Act:* The stated purposes of the Sentencing Reform Act (SRA) are to: ensure that the punishment for an offense is proportionate to the seriousness of the offense and the offender's prior history; promote respect for the law by providing punishment which is just; be commensurate with the punishment imposed on others with similar offenses; protect the public; give the offender the opportunity to improve him or herself; and make frugal use of the state's resources.

*Sentencing Guidelines Commission:* The Sentencing Guidelines Commission is a state agency statutorily required to evaluate and monitor adult and juvenile sentencing policies and practices and make recommendations to the Governor and the Legislature, serve as a clearinghouse and information center on adult and juvenile sentencing, and conduct ongoing research on sentencing and related issues.

*Sentencing Hearings:* The court is required to hold a sentencing hearing before imposing a sentence on a defendant. The court must consider pre-sentence reports, if any, and must allow arguments from the prosecutor, defense counsel, offender, victim, survivor of the victim, and an investigative law enforcement officer as to the sentence to be imposed. Copies of all pre-sentence reports presented to the court are sent to the Department of Corrections at the conclusion of sentencing and accompany the offender if he or she is committed to the custody of the department.

*Community Custody, Community Placement, & Post-Release Supervision:*

In General: The terms community placement, community custody, and post-release supervision essentially all refer to supervision following release from the Department of Corrections. The terms were devised in part to indicate when the department could sanction an offender for violating conditions of release administratively (community custody), and when the department had to return to court to ask the court to impose sanctions (post-release supervision).

Community custody is that portion of an inmate's sentence of confinement served « in lieu of earned early release time, or imposed by the court under the special drug offender sentencing alternative, the special sex offender sentencing alternative, or for sex offenses committed after a certain date « in the community subject to controls placed on the inmate's movement and activities by the Department of Corrections.

Post-release supervision begins upon completion of the term of confinement, and is that portion of community placement which is not community custody.

Community placement is that period during which an offender is subject to the conditions of community custody and/or post-release supervision. It may consist entirely of community custody, entirely post-release supervision, or a combination of the two.

Terms and Conditions: When sentencing for a sex offense or a serious violent offense committed between July 1, 1988, and July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined that the defendant or an accomplice was armed with a deadly weapon, and certain drug offenses, the court must include in the sentence a one-year term of community placement. When sentencing for a sex offense committed between July 1, 1990, and June 6, 1996, a serious violent offense, vehicular homicide or vehicular assault, committed on or after July 1, 1990, the court must include a term of community placement for two years or up to the period of earned release. When sentencing for a sex offense committed after June 6, 1996, the court must include a term of community custody of three years or up to the period of earned release. Unless waived by the court, certain mandatory conditions are required to be included in the term of community placement or community custody. Special conditions, such as crime-related prohibitions, may also be included.

All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation are under the supervision of the Department of Corrections and must follow the instructions and conditions of the department. The instructions must include reporting as directed to a community corrections officer, remaining within certain geographical boundaries, notifying the officer of any change in address or employment, and paying a supervision fee. For offenders sentenced to terms involving community custody, the department may also include any appropriate conditions of supervision, including prohibiting the offender from having contact with specified individuals.

Violations: If an offender violates a condition of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any time actually spent in community custody. Other sanctions are authorized for sex offenders who violate a condition of community custody. An offender accused of violating a condition of community custody is entitled to a hearing before the department before sanctions are imposed. The hearing is considered a disciplinary hearing and is not subject to the requirements of the Administrative Procedure Act.

An offender who violates a condition of community placement can be arrested and placed in total confinement pending a determination by the court.

Inmates who have been transferred to community custody and are detained in a local correctional facility are generally the financial responsibility of the department. However, the local correctional facility is financially responsible for portions of confinement sanctions received by certain offenders who have committed community custody violations.

*Community Supervision:*

In General: On all sentences of confinement of one year or less, the court may impose up to one year of community supervision which is a period of time during which the convicted offender is subject to crime-related prohibitions and other conditions imposed by the court. "Crime-related prohibition" does not include requiring an offender to affirmatively participate in rehabilitation or otherwise perform affirmative conduct. Community supervision is the functional equivalent of probation in other states.

First-Time Offender Waiver: For a first-time offender, the court can waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to 90 days confinement in a county jail and a requirement that the offender refrain from committing new offenses. The sentence can also include up to two years of community supervision which, in addition to crime-related prohibitions, may include requirements that the offender perform specific actions, such as devoting time to a specific occupation or course of study, undergoing treatment, and reporting as directed to the court and a community corrections officer.

Unranked Felonies: If the crime for which the defendant is being sentenced is "unranked" « meaning that a sentence range has not been established for the crime « the court must impose a determinative sentence that can include up to one year of community supervision, along with other penalties, including a term of confinement of up to one year.

*Categorization of Crimes for Prosecuting Standards:* For prosecuting standards purposes, crimes are categorized as "crimes against persons," "crimes against property/other crimes," and "unclassified."

*Tolling:* A term of confinement « including community custody « is tolled during any time in which the offender has absented himself or herself from confinement without approval. A term of supervision is tolled during any time in which the offender has absented himself or herself from supervision without approval. A term of supervision is also tolled during any time an offender is in confinement, unless the offender is detained in confinement for violating a condition of supervision and the offender is later found not to have violated the condition.

*Legal Financial Obligations:* The Department of Corrections is responsible for monitoring and enforcing offenders' sentences with regard to legal financial obligations.

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## **Summary of Bill:**

*Purpose of the Sentencing Reform Act:* Reducing the risk of reoffending by offenders in the community and making frugal use of local government resources are added to the list of purposes of the SRA.

*Sentencing Guidelines Commission:* By December 31, 1999, the Sentencing Guidelines Commission is required to establish community custody ranges to be included in sentences for sex offenses, violent offenses, crimes against persons, and certain drug offenses not sentenced under the special drug offender sentencing alternative, and the commission can propose modifications to these ranges each year. The ranges are to be based on the principles of the SRA and must take into account the funds available to the department for community custody. The minimum term in each range must not be less than one-half of the maximum term. The Legislature can adopt or modify the ranges proposed by the commission, but if the Legislature does not act in the next regular session after the ranges are proposed, they take effect without legislative approval.

*Sentencing Hearings:* Except in cases involving a sentence of life without the possibility of release or death, the court may order the Department of Corrections to complete a risk assessment report. If ordered and available before sentencing, the court must consider the report when imposing the sentence. "Risk assessment" is defined to mean the application of an objective instrument for assessing an offender's risk of re-offense, taking into consideration the nature of the harm done by the offender, the place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. Copies of the risk assessment report are sent to the Department of Corrections and accompany the offender if he or she is committed to the custody of the department.

### *Community Custody:*

In General: A new subsection of the SRA is created that requires, beginning with crimes committed after July 1, 2000, a mandatory term of community custody for persons convicted of a sex offense, a violent offense, any crime against a person, and certain drug offenses. With respect to those violent offenses and crimes against persons committed on or after the effective date of the act, but before July 1, 2000, for which a term of community placement is not already required, the court is required to include a one-year term of community placement as part of the sentence.

The department must develop and monitor transition and relapse prevention strategies to reduce the risk to the community following a sex offender's term of confinement in the custody of the department.

Terms: The term of community custody is to be the community custody range for the crime established by the Sentencing Guidelines Commission, or the period of earned

release awarded, whichever is longer. The term of community custody is to begin upon completion of the term of confinement, or upon transfer to community custody in lieu of the earned release. Except for terms of community custody under the special sex offender sentencing alternative, the department must discharge the offender from community custody on a date determined by the department within the range, or at the end of the period of earned release, whichever is later. The department may modify the discharge date based on risk and performance of the offender. At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court can extend any or all of the conditions for a period up to the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community custody. If the court extends a condition beyond the community custody term, the department is not responsible for the supervision of the offender's compliance with the condition. If the offender violates a condition that has been extended by the court beyond the term of community custody, it will be considered a violation of the sentence punishable by contempt of court.

Conditions: Unless waived by the court, the conditions of community custody must include that the offender: report to the assigned community corrections officer as directed; work at department-approved education, employment, and/or community service; not possess or consume controlled substances; pay supervision fees; receive approval from the department of residence location and living arrangements; and submit to affirmative acts necessary to monitor compliance with the orders of the court. The conditions of community custody may also include requirements that the offender: remain within, or outside of, a specified geographical boundary; have no contact with the victim of the crime or a specified class of individuals; participate in crime-related treatment or counseling services; not consume alcohol; and comply with any crime-related prohibitions. The offender may also be required to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, and to obey all laws. The department must assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk, but the department may not impose conditions contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. The department must notify the offender of such additional conditions or modifications in writing. An offender may, within the close of the next business day after receiving such notice, request an administrative review of the condition imposed or modified by the department under rules adopted by the department. The condition remains in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of re-offending, or the safety of the community.

Within funds available for community custody, the department must determine the conditions and duration of community custody based on risk to community safety, and must supervise offenders on the basis of risk to community safety and conditions imposed

by the court. The secretary is required to adopt rules for the implementation of this requirement.

Violations: If an offender violates a condition of his or her community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, or other sanctions available in the community. An offender who has violated the conditions of his or her community custody (imposed for a crime committed on or after July 1, 2000) after having completed his or her maximum term of total confinement, can be sanctioned to total confinement by the department for up to 60 days for each violation.

An offender accused of violating a condition of community custody is entitled to a hearing prior to the imposition of sanctions, unless he or she waives the hearing. The department must develop, by rule, procedures for the hearing and a structure of graduated sanctions. Hearing procedures must include the following: (1) hearing officers must report through a chain of command separate from that of community corrections officers; (2) written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed must be provided to the offender, along with a statement of the offender's rights in the hearing process, and the offender's right to file a personal restraint petition after a final decision of the department; (3) the hearing must be electronically recorded and held within certain time limits; (4) the offender has the right to be present, to testify or remain silent, to have the assistance of an advisor appointed by the hearing officer when there is a language or communications barrier, to call witnesses and present documentary evidence, and to question witnesses. The offender can appeal the decision to a panel of three officers designated by the secretary. The sanction is to be reversed or modified if a majority of the panel finds that it was not reasonably related to the crime of conviction, the violation committed, the offender's risk of re-offending, or the safety of the community.

The department is required to consult with the Washington Association of Sheriffs and Police Chiefs and those counties in which the sheriff does not operate a correctional facility to establish a methodology for determining the 1998 local correctional facilities bed utilization rate for offenders being held for violations of supervision. If the department's use of bed space for sanctions under the act exceeds the 1998 rate, the department must compensate the counties for the excess use..

*Community Supervision:*

In General: For offenses committed on or after July 1, 2000, the one-year term of community supervision that the court may order on sentences of confinement for one year or less is converted to a one-year term of community custody, subject to the same conditions and sanctions described above.

First-Time Offender Waiver: The two-year term of community supervision that the court may impose for a first-time offender is converted to community custody and limited to one year. The court is eliminated as an entity offenders may be required to report to.

Unranked Felonies: For unranked crimes committed after July 1, 2000, the sentence may include up to one year of community custody, instead of one year of community supervision, and is subject to the terms and conditions of community custody discussed above.

*Categorization of Crimes for Prosecuting Standards*: Stalking, custodial assault, and violations of no-contact orders and protection orders in domestic violence cases are added to the "crimes against persons" category, thus requiring a mandatory term of community custody for crimes committed after July 1, 2000.

*Tolling*: A term of community custody is tolled during any time period in which the offender has absented himself or herself from supervision without approval. A term of community custody is also tolled when an offender is in confinement, unless the offender is detained in confinement for violating a condition of community custody and is later found not to have violated the condition. Tolling during periods of supervision for legal financial obligations only is eliminated.

*Access to Records*: For the purpose of determining, modifying, or monitoring compliance with the conditions of community custody, community placement, or community supervision, the department is given access to all relevant information relating to offenders that is in the possession of public agencies, except as specifically prohibited by law. The department may also require periodic reports from providers of treatment and services that have been ordered by the court or the department.

*Legal Financial Obligations*: The department is authorized to arrange for the collection of unpaid legal financial obligations through the county clerk. The costs of collection are to be paid by the offender.

*Deployment of Community Corrections Staff*: To the extent practicable, the department is required to deploy community corrections staff on the basis of geographic areas in which offenders are located. The department is also required to establish a systematic means of assessing risk to the safety of these communities.

*Study of the Effect of Community Custody*: The Washington State Institute for Public Policy must, subject to available resources, conduct a study of the effect of the use of community custody on recidivism and other outcomes. The design for the study must be reported to the Legislature by January 1, 2000, a progress report must be made by January 1st of each year after that, and a final report must be provided by January 1, 2010.

*Defense to Liability:* The act does not create immunity or a defense to liability for personal injury or death based solely on the availability of funds.

*Rules:* The Secretary of Corrections is authorized to adopt rules to implement sections 1-12 of the act.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed. Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000. However, the bill is null and void unless funded in the budget.

**Testimony For:** (Criminal Justice & Corrections) (Original bill) The legislation promotes public safety and focuses resources on those most likely to re-offend. There are currently 55,000 offenders out in the community under the Department of Corrections supervision. However, since the parole system was abolished with the advent of the Sentencing Guidelines Commission, supervision authority is weak. The goal with this legislation is to prevent the next crime. The bill deals with four major problems inherent in the current system: (1) the level of supervision is based on legal status instead of risk; (2) the department is unable to allocate resources efficiently; (3) the department has no capacity to hold offenders accountable; and (4) the current system is not consistent with the department's move toward more community policing. It also represents a collaborative effort and is based on proven research principles.

The bill establishes procedures to be followed when an alleged violation of a condition of community custody occurs. These procedures are akin to parole revocation hearing procedures and are likely to be upheld as providing the necessary due process.

Under the old parole system, community corrections officers were able to nip problems in the bud, but under the current system, community corrections officers do not have the tools they need to supervise offenders and hold them accountable. There is also much confusion as to which tools are available to deal with which offender. The courts and the department should have the authority to require affirmative conduct, such as treatment programs for substance abuse. Punishment for violations needs to be swift and sure, but under the current system it is not because courts and prosecutors are overloaded. The courts are not in the position to perform the function of long-term supervision -- that authority should rest with the Department of Corrections. Victims of crimes are frequently concerned that the current level of supervision is not enough.

(Criminal Justice & Corrections) (In support with concerns) The amount of supervision that the court can order for first-time offenders should not be reduced from two years to

one. The two-year period is particularly useful for offenders who need mental health counseling or substance abuse treatment.

The Department of Corrections should be required to supervise all offenders during community custody, not pick and choose when they are going to do so based on funding constraints. The Department of Corrections should not be able to change conditions of community custody that have previously been ordered by the court.

The department should not be able to set conditions of community custody outside the court setting. Violations of community custody should also be decided by the court, where the defendant has the benefit of counsel. If burdening the courts is a concern, that burden will be much greater when inmates begin filing personal restraint and habeas corpus petitions. Also, the department has tools available now to resolve alleged violations of supervision without going to court, but they are not being used.

(Appropriations) (Substitute bill) This bill will help reduce crime and, in the long term, should help save money.

This is critical and strengthens the supervision of offenders in the community. Parole was originally eliminated so that offenders were not released early, but we then lost the authority to supervise offenders after they are released. To address that problem, a number of different forms of community supervision have been added back over time - different forms, for different periods of time, for different crimes. The current system is complex and provides only the illusion of effective supervision. Governor Locke wants to put us back in the business of public safety. With successful supervision, everyone wins.

This represents an investment into a very thin infrastructure. The current scheme is complex, slow to respond and makes little sense. Immediate sanctions without clogging up the courts is a major part of this bill. Right now, that process can take up to three months. By tying the amount of supervision to the risk, resources are better used and the public is safer.

Effective programs within institutions need the support of effective supervision. This bill provides that support.

**Testimony Against:** (Criminal Justice & Corrections) None.

(Appropriations) (Substitute bill) Decisions made about sentencing are being taken away from the court. There is a lack of community corrections officers and this will not fix that. The math in the bill does not add up - it will require an addition of many more officers than the fiscal note calls for.

Reducing the first-time offender waiver to one year may not allow for the completion of drug treatment.

Piecemeal contracting out of jobs currently performed by state employees should not occur. Any decisions on that topic should be tied to the civil service reform proposal now under consideration by this Legislature.

**Testified:** (Criminal Justice & Corrections) (In support) Dick Van Wagenen, Governor's Policy Office; Joseph Lehman, Department of Corrections; David Boreiner, Sentencing Guidelines Commission; Mike Patrick, Washington Association of Sheriffs and Police Chiefs; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Dan Satterberg, King County Prosecutor's Office; Scott Wilcox, Community Corrections Officer; Alice Rogers, Community Corrections Officer; Donald Lachman, Neighborhood Corrections Initiative; Victor Maes, Neighborhood Corrections Initiative; Linda Hooper, Department of Corrections; Ellie Schroeder, Pioneer Square Community Council; Greg Hopkins, Tacoma Police Department; Linda Grant; Roy Carson, Washington State Coalition Against Domestic Violence; Joan Guenther, Washington Coalition of Crime Victim Advocates; Eileen O'Brien, Pierce County Prosecuting Attorney; and Devone Smith, Washington Federation of State Employees.

(Criminal Justice & Corrections) (In support with concerns) Larry McKeeman, Superior Court Judge's Association; Bill Jaquette, Washington Association of Criminal Defense Lawyers; and David Donnan, Washington Association of Criminal Defense Lawyers.

(Appropriations) (In support) Representative Ballasiotes, prime sponsor; Representative O'Brien, sponsor; Dan Satterberg, Washington Association of Prosecuting Attorneys and King County Prosecutors; Dick Van Wagenen, Governor's Policy Office; Linda Grant, Pioneer Human Services; Greg Hopkins and Vic Maes, Treatment/Law Enforcement; Devone Smith, Washington Federation of State Employees; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; and Judge Brian Gain, King County Superior Court.

(Appropriations) (In support with amendment) Martha Harden, Superior Court Judges Association.

(Appropriations) (Opposed) Bill Jaquette, Snohomish Public Defender and Washington Association of Criminal Defense Lawyers.