

SENATE BILL REPORT

SB 5421

As Reported By Senate Committee On:
Human Services & Corrections, March 2, 1999
Ways & Means, March 8, 1999

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

Brief Description: Enhancing supervision of offenders.

Sponsors: Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke.

Brief History:

Committee Activity: Human Services & Corrections: 2/4/99, 3/2/99 [DPS-WM].
Ways & Means: 3/8/99 [DP2S].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5421 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Franklin, Long, Patterson, Sheahan, Stevens and Zarelli.

Staff: Fara Daun (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5421 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Fairley, Fraser, Honeyford, Kline, Kohl-Welles, Long, McDonald, Rasmussen, Roach, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley, Wojahn and Zarelli.

Staff: Bryon Moore (786-7826)

Background: The Sentencing Reform Act of 1981 abolished Washington's parole system. Beginning in 1988, however, the Legislature has required DOC to supervise several classes of offenders following release but has not removed limitations on DOC's ability to effectively supervise offenders in the community. In addition, the existing structure of community supervision is very complex and the terminology that describes it is confusing. Concern exists that the current structure does not reflect either the risks posed by offenders in the community or public expectations of DOC's ability to monitor offenders and protect the public.

Summary of Second Substitute Bill: Community supervision for sex offenses, violent offenses, crimes against persons, and felony drug offenses committed after July 1, 2000, is community custody. Conditions of community custody and levels of supervision are based on risk. Stalking, custodial assault, and felony violations of domestic violence protection orders are crimes against persons. The Sentencing Guidelines Commission establishes community custody ranges and make recommendations to the Legislature by December 31, 1999. The Legislature may adopt or modify the recommendations. If the Legislature does not act, the initial ranges recommended by the commission become law. The commission may propose annual modifications, but modifications become law only if enacted by the Legislature.

The court must sentence offenders subject to community custody to a range of community custody. It may impose conditions of supervision, including affirmative conditions such as rehabilitative treatment, based on reasonable relation to the circumstances of the offense, the risk of recidivism, or community safety. Offenders may not be discharged from community custody before the end of the period of earned release but DOC may discharge an offender between the end of the earned release and the end of the range specified by the court.

When sex offender treatment is imposed, the treatment provider must be certified by the state. There are three exceptions to the certification requirement: the offender lives out of state, there is no certified provider within a reasonable geographic distance from the offender's home, or the treatment program meets Department of Health rules and the provider consults with a certified provider. An offender's failure to participate in required treatment is a violation.

The court may also impose conditions on sex offenders beyond the end of the term of community custody. DOC is not required to monitor conditions beyond the end of community custody.

DOC may establish and modify additional conditions based on risk to community safety. DOC must provide the offender written notice of any modifications to the conditions. DOC may not impose conditions contrary to conditions set by the court and may not contravene or reduce any court imposed conditions.

DOC must complete risk assessments of offenders using a validated risk assessment tool. When directed by a sentencing court, the initial risk assessment must be completed prior to sentencing and used by the court in sentencing. If not performed prior to sentencing, the initial risk assessment will be completed when an offender is placed in a DOC facility. A risk assessment must also be done prior to release. The results of a risk assessment cannot be based on unconfirmed allegations. DOC has jurisdiction over offenders on community custody status and may enforce the conditions through sanctions for violations. DOC must develop a structure of graduated sanctions for violations up to and including a return to full confinement.

Offenders subject to sanctions for violations have the right to a hearing, unless they waive the right. A violation finding cannot be based on unconfirmed or unconfirmable allegations. Violation hearing officers and CCOs must report through separate chains of command. Due process protections include notice, timelines for hearings, the right to testify or remain silent, to call and question witnesses, and present documentary evidence. The sanction will be

overturned if it is not reasonably related to the crime of conviction, or the violation committed, or the safety of the community.

DOC may arrange to transfer the duties of collecting legal financial obligations to county clerks or other entities if the clerks do not assume this responsibility. Post-release supervision for purposes of collecting LFOs will no longer be tolled when the offender is not available for supervision. DOC, in conjunction with the Washington Association of Sheriffs and Police Chiefs (WASPC) and counties, must establish a baseline jail bed utilization rate and negotiate terms of any increase. The rate of reimbursement will be the lowest rate charged for counties with their contract with their respective municipal governments.

The year term of community supervision for unranked felonies becomes a term of community custody. The First Time Offender Waiver becomes a term of community custody and includes conditions of supervision. The term must not exceed one year unless the court orders treatment for between one and two years, in which case supervision ends with treatment.

Except as otherwise prohibited, DOC has the authority to access records maintained by public agencies and may require periodic reports from treatment providers and providers of other required services for the purposes of setting, modifying, or monitoring compliance with the conditions of supervision. DOC must develop and monitor transition and relapse prevention strategies, including risk assessment and release planning, for sex offenders. DOC must also deploy CCOs on the basis of the geographic distribution of offenders and establish a systematic means of assessing the risk to community safety. The Washington State Institute of Public Policy must conduct a study of the effect of the act on recidivism and other outcomes and report annually to the Legislature.

Second Substitute Bill Compared to Substitute Bill: The \$2.8 million appropriation for providing a salary increase to community correction officers is removed. The provision allowing the court to impose a treatment regimen including medroxyprogesterone acetate on certain sex offenders is removed.

Language is added providing authorization for the department to contract with other entities if the county clerks opt not to contract for collection duties associated with monetary only supervision cases.

Language clarifying that counties are financially responsible to the extent of current utilization of jail beds based on calendar 1998 is added. Other clarifying language is added around the method by which increased use of jail beds will be determined. The rate the department will be required to reimbursement counties is to based on the lowest rate charged by the county under its contract with municipal governments.

The phrase "within available funds" is included in the requirements around the implementation of the transition and relapse prevention strategies for sex offenders.

Substitute Compared to Original Bill: The first time offender waiver may exceed one year when treatment is ordered for between 12 and 24 months. When the Sentencing Guidelines Commission recommends modifications to the structure of community custody ranges, they must be adopted by the Legislature before becoming effective.

DOC must develop and monitor transition and relapse prevention strategies, including risk assessment and release planning, for sex offenders. DOC must also deploy CCOs on the basis of the geographic distribution of offenders and must assess the safety risk to those communities. There is no authority for community notification of offenders on community custody. DOC may not change court imposed conditions. Sex offender treatment providers must be certified. Offenders' failure to participate in required treatment is a violation. Offenders who commit listed crimes between the effective date of the act and July 1, 2000, are subject to community placement and conditions of supervision. Due process provisions for offenders are strengthened. Violation hearing processes are defined.

Authority to contract with parties other than county clerks for the collection of LFOs is removed. DOC, WASPC, and the counties must establish a baseline jail bed use and negotiate terms for any increases. WSIPP must conduct a study of the effect of this bill on recidivism and related outcomes. Specified CCOs receive a salary increase.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill puts the state back in the business of public safety. It is also a good example of a state-local partnership and should have a positive impact on jail beds. Current law is sanction based, not risk based and cannot hold offenders accountable for violations in meaningful ways. This bill creates a system based on the risk an offender poses to the community that includes the ability for a CCO to intervene to prevent a violation or new crime. It provides swift, certain, and proportionate sanctions for violations. The risk assessment factors in differences between charges at booking and conviction, assists judges to meet the SRA guideline to consider community safety and includes the opportunity for victims to be heard. The ability to impose affirmative conditions is important for both punishment and rehabilitation. The structure provides constitutional protections. The graduated sanctions provide effective monitoring and enforcement tools. This provides for proactive monitoring and immediate accountability. It allows CCOs to be more effective and increases community safety. It focuses the workload on those offenders who pose the highest risk.

Testimony Against: This gives decisions that should be made only by a court to DOC and does not protect offenders' rights. The risk assessment tool might be used unfairly. DOC should not be allowed to contract with parties other than the counties for collecting LFOs.

Testified: Dick Van Wagenen, Office of Financial Management (pro); Joe Lehman, Secretary, DOC (pro); David Boerner, Sentencing Guidelines Commission (pro); Hon. Tom Felnagle, Superior Court Judges Assn, Pierce County Law & Justice Commission (pro); Norm Maleng, King County Prosecuting Attorney (pro); John Ladenberg, Pierce County Prosecuting Attorney (pro); Bill Jacquette, Washington Defender Association (concerns); Larry Erickson, WASPC (pro); Mike Patrick, Washington Council of Police and Sheriffs (pro); Alice Rogers, Community Corrections Officer (pro); Scott Wilcox, Community Corrections Officer (pro); Greg Hopkins, Tacoma Police (pro); Captain Tag Gleason, Seattle

Police (pro); Linda Hooper, DOC (pro); Linda Grant, Pioneer Human Services (pro); Ellie Schroeder, Pioneer Square Community Council (pro); Suzanne Brown, Washington Coalition of Sexual Assault Victims (pro); Eileen O'Brien, Pierce County Prosecuting Attorney Victims' Office, DOC Victim Council (pro); Martha Harden, Superior Court Judges Association (pro with concerns); Greg Devereux, Washington Federation of State Employees (pro with concern, written testimony).