

# HOUSE BILL REPORT

## SSB 5749

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to hearings concerning violations by sex offenders of postrelease conditions.

**Brief Description:** Revising procedures for hearings concerning violations by sex offenders of postrelease conditions.

**Sponsors:** Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Hargrove, Stevens and Rasmussen; by request of Indeterminate Sentence Review Board).

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 3/26/03, 4/2/03 [DPA].

#### Brief Summary of Substitute Bill (As Amended by House Committee)

- Authorizes a designee of the Indeterminate Sentence Review Board (ISRB) to administer hearings for any sex offender accused of violating his or her community custody status.
- Expands the time-line for holding hearings for disciplinary proceedings.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

**Staff:** Yvonne Walker (786-7841).

### Background:

A sex offender that has been released by the ISRB and who violates a condition of community custody can be arrested and detained in a more restrictive confinement status. A system of graduated sanctions may be imposed on an offender who violates his or her

community custody (e.g., home detention, electronic monitoring, work crew, curfew, etc.), or the offender's release to community custody may be suspended or revoked. The offender is entitled to an administrative hearing before the ISRB prior to the imposition of sanctions. Hearings for disciplinary proceedings can only be conducted by direct members of the ISRB unless entered into an agreement with the Department of Corrections to use hearing officers.

Anytime an offender is accused of violating his or her community custody status, that offender must receive written notice of his or her violation. The offender is then entitled to a hearing prior to the imposition of sanctions, unless he or she waives the hearing. All hearings must be electronically recorded and 1) held within 15 working days, but not less than 24 hours after notice of the violation, if the offender is not being held in custody; or 2) held within five working days, but not less than 24 hours after notice of the violation, if the offender has been arrested and is being held in total confinement.

At the hearing the offender has the right to be present, to testify or remain silent, to have the assistance of a qualified advisor if he or she has a language or communications barrier, to call witnesses and present documentary evidence, and to question witnesses. In addition, the person has a right to an attorney if revocation of community custody is a possible sanction. The offender can appeal the decision to a panel of three officers designated by the chair of the ISRB. The sanction is to be reversed or modified if a majority of the panel finds that the sanction 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. A violation finding cannot be based on unconfirmed or unconfirmable allegations.

Currently, the ISRB administers approximately 40 hearings per year.

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### **Summary of Amended Bill:**

The time line for holding hearings for disciplinary proceedings of sex offenders accused of violating their community custody status is expanded and such hearings may be administered by members other than the ISRB members.

A provision is added to authorize any member of the ISRB or his or her designee to hold an administrative hearing for any sex offender accused of violating any condition or requirement of community custody, prior to the imposition of sanctions. If the accused offender is not being held in confinement, the hearing must take place within 30 days (instead of 15 working days) upon receiving notice of the violation. If the accused offender is being held in custody, then the hearing must take place within 30 days (instead of five working days) upon receiving notice of the violation. Within 48 hours of receipt of the allegation, the ISRB or its designee must make a determination whether probable cause exists to believe the violation occurred. If probable cause exists, the offender has the right to an attorney if revocation of community custody is a probable

sanction (as opposed to a possible sanction). The ISRB may not revoke an offender's release to community custody if he or she was not represented by an attorney at the administrative hearing, unless the offender waived the right to counsel.

Technical corrections are made and inconsistent effective dates are revised from 3ESSB 6151 (that was passed by the Legislature in 2001).

**Amended Bill Compared to Substitute Bill:**

The striker makes a number of technical amendments, clarifies language, and cleans up some inconsistent effective dates from 3ESSB 6151 (that was passed by the Legislature in 2001).

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This bill formalizes a number of things that have been the ISRB's policy for years. The ISRB now makes a probable cause hearing for parole violators and this bill codifies this and ensures that the probable cause hearing is held within 48 hours. The bill also ensures that a person could not be sent back to prison on a violation if they have not been represented by counsel.

The bill also authorizes the ISRB to use designees to conduct hearings. This will allow the ISRB to use its two experienced hearing officers to conduct hearings. Current law has a built-in appellate process. A decision made by a hearing officer can be appealed before a three-member panel. This helps to protect an offender's individual rights.

In addition, it has been found that it is impossible to prepare for and defend a case in five days. Right now violation hearings, whether in custody or not, are usually held within 30 days. The present five and 15 day time periods in statute are just not realistic. The main problem with this is that it ordinarily takes time to appoint an offender's defense counsel and once the counsel is appointed he or she routinely requests for a continuance so that they can properly prepare their case. The state technically has 90 days under the speedy trial rule if the person is in custody; this bill is just asking for 30 days. This will give attorneys enough time to prepare for their case.

Many violations that these offenders commit are technical (i.e., a missed appointment). These types of violations can be handled in the field by community corrections officers. In more serious situations where the offender is at risk of being sent back to prison, the

offender will then be brought before the ISRB.

**Testimony Against:** Current law requires that a hearing be held within five days if the offender is in custody or within 15 days if the offender is not being held in custody. The problem with extending this period of time to 30 days is that it is unfair under due process principles. Individuals who are affected by this law are those that are charged with alleged violations of their post release supervision. These are not necessarily individuals who have been charged with another crime. Under this bill, individuals could wind up staying in jail for up to 30 days before they even have a chance to refute or address the allegations. In court trials individuals have the right to a speedy trial and that rule should apply in these violation hearings too. The current five and 15 day time limit in current law is sufficient. If a defense attorney needs more time then he or she can ask for a continuance. In addition, by increasing the hearing time from five to 30 days, the bill would have the effect of having individuals incarcerated longer than under current law.

There is also a problem with letting designees of the parole board conduct hearings. The ISRB members have more experience than hearing officers for making the decisions for community custody violations.

The circumstances that change regarding when a counsel will be appointed from "possible" to "probable" is a problem. Who makes the decision to what is probable? That phrase is too vague. If an individual is facing a loss of liberty then the offender should have counsel provided.

**Testified:** (In support) John Austin, Indeterminate Sentence Review Board.

(Opposed) Mitchell Riese, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.