

# HOUSE BILL REPORT

## ESHB 1402

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### As Amended by the Senate

**Title:** An act relating to supervision of offenders who travel or transfer to or from another state.

**Brief Description:** Regulating supervision of offenders who travel or transfer to or from another state.

**Sponsors:** By House Committee on Criminal Justice & Corrections (originally sponsored by Representative O'Brien; by request of Sentencing Guidelines Commission).

#### **Brief History:**

##### **Committee Activity:**

Criminal Justice & Corrections: 2/3/05, 2/15/05 [DPS];

Appropriations: 2/24/05, 2/28/05 [DPS(CJC)].

##### **Floor Activity:**

Passed House: 3/14/05, 97-0.

Senate Amended.

Passed Senate: 4/12/05, 45-0.

#### **Brief Summary of Engrossed Substitute Bill**

- Authorizes the Department of Corrections to supervise nonfelony offenders transferring to Washington under the Interstate Compact for the Supervision of Parolees and Probationers (Compact).
- Requires probation departments appointed to supervise nonfelony misdemeanor offenders to follow certain procedures when an offender requests permission to transfer to another state under the Compact.

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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 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

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

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Criminal Justice & Corrections be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

**Staff:** Bernard Dean (786-7130).

**Background:**

Under Washington and other states' laws, criminal sentences commonly require a period of supervision after release from jail or prison. In Washington, the supervision of all adult felony and some nonfelony offenders is the responsibility of the Department of Corrections (DOC).

Offenders under supervision sometimes request to move from one state to another. For example, an offender may have family ties, job opportunities, or may have a residence in another state. For many years, states have recognized the desirability of permitting this movement while continuing to supervise these offenders.

In 1937, the Legislature enacted the original Interstate Compact for the Supervision of Parolees and Probationers (Compact) and joined with 49 other states including the District of Columbia, Puerto Rico, and the Virgin Islands to create a system of reciprocity in supervising offenders who move from one state to another. After years of working with the national Compact, it was found that there were many problems and that it needed to be amended. As a result, nearly 60 years later, a new national Compact was adopted. The Washington Legislature amended its statutory language in 2001, and consequently joined 35 other states in the new Compact. As of the end of 2004, all 50 states had joined the new Compact in order to take on the responsibility for the supervision of adult offenders in the community who are authorized to travel across state lines both to and from compacting states.

The authority for Compact monitoring in Washington is under the Sentencing Guidelines Commission (SGC). The SGC's duties include reviewing the DOC's policies, recommending policies for the Compact administrator, and reporting annually to the Legislature about the Compact operations. In addition, each state has a Compact administrator (Washington's Compact administrator is located within the DOC), who maintains contact with counterparts in other states and handles requests for supervision, violation reports, and other business related to the Compact.

The Compact requires compacting states to supervise all (felony and nonfelony) offenders transferred to their state. The Compact permits each state (as a "sending state") to authorize offenders under supervision to move to other states when appropriate, after notifying the other state and securing its approval. It also requires each state (as a "receiving state") to approve such moves for appropriate reasons, and to supervise the offenders on behalf of the states where they were sentenced. A receiving compacting state must accept an offender if the

offender meets the criteria under the Compact. However, there are some very rare occasions when a "receiving" state can deny an application for supervision of an adult offender.

The Compact requires receiving states to notify sending states when offenders violate conditions of supervision, and permits the sending states to bring them back for sanctions authorized under the sending state's law, subject to the receiving state's right to prosecute any new crimes they may have committed.

Compacting states are authorized to charge an application processing fee to offenders wishing to transfer his or her residence and supervision requirements to another state. In Washington, the DOC also charges offenders under the Compact a supervision fee to help recoup a portion of the cost of supervision. The supervision fee that is normally charged to offenders ranges from \$3 per month for risk level D (low-level felony) offenders to \$40 per month for misdemeanants offenders.

At the end of 2004, the DOC was supervising 2,500 felony offenders on behalf of other states under the Compact, while other states were supervising approximately 1,000 offenders on Washington's behalf. The DOC does not have the statutory authority to supervise nonfelony misdemeanor offenders on behalf of other states.

#### **Summary of Engrossed Substitute Bill:**

The provisions relating to supervising offenders under the Compact are expanded. The DOC is authorized to supervise nonfelony as well as felony offenders transferring to Washington under the Compact.

The DOC must process applications for any felony or nonfelony misdemeanor offender wishing to transfer to or from Washington and may charge that offender a reasonable fee for processing the application. If a misdemeanor probationer or defendant whose sentence has been deferred, requests permission to transfer to another state, the probation department must determine whether the transfer request falls under the realm of the Compact. If the request is subject to the Interstate Compact for Adult Supervision, the probation department designated to supervise the offender must:

- notify the DOC of the probationer's request;
- provide the DOC with supporting documentation it requests for processing the offender's application;
- notify the offender of any fee due to the DOC for processing his or her application;
- cease supervision of the offender while the other state resumes supervision of the offender pursuant to the Compact; and
- resume supervision if the offender returns to Washington before his or her term of supervision has expired.

Any probationer or defendant that transfers to another state under the Compact must receive credit for any time served while being supervised by the other state.

If a probationer or defendant is returned to Washington at the request of the receiving state under the rules of the Compact, the DOC must be responsible for the cost of returning the person.

**EFFECT OF SENATE AMENDMENT(S):**

The amendment restores all the immunity language that states that whenever a Washington misdemeanor offender is transferred to another state and such offender is under that other state's supervision, that the state of Washington, the DOC and its employees, and any city or county located in Washington and their employees, are not liable for civil damages resulting from any act unless their act constitutes gross negligence.

A provision is added to limit the bill to those offenders who the county correctional officer must determine whether to refer to DOC for transfer proceedings to those with terms of supervision of one year or more.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2005.

**Testimony For:** (Criminal Justice & Corrections) The purpose of the Compact is to promote public safety throughout the states. Under the new national Compact, the SGC has the responsibility of the administration of the Compact. Washington was one of the original 35 signers of the Compact when it went into effect in 2001. As a member of the Compact, it is required to adhere to all the rules of the Compact. Currently, Washington is in compliance with the Compact with the exception of supervising nonfelony offenders transferring to Washington from other states.

When the original rules were developed for the Compact there were disputes among some states regarding the supervision of misdemeanants. Over the last year, the states' Compact administrators tried to bring about a compromise over the types of offenders they would supervise. This bill is a result of that compromise. It would permit the DOC to supervise only misdemeanants convicted of serious offenses which include sex offenses, or a second driving under the influence offense, offenses committed with the use or possession of a firearm, or those convicted of causing serious physical or psychological harm to another. These are the only nonfelony offenders that the DOC would have to supervise.

Although this is an added expense to the DOC, it has the added benefit of providing notice to Washington of the offenders entering and leaving the state. Washington can also impose its own rules of supervision on those individuals entering the state.

This bill is absolutely necessary. If Washington's laws are not changed then the state can be subject to sanctions from the national body and subject to the possibility of lawsuits from other states for noncompliance with the Compact.

**Testimony For:** (Appropriations) Washington was one of the first of the original 35 states to sign onto the interstate compact. With the exception of Massachusetts, all states have now

signed onto the new compact. All but Washington and Tennessee are now in compliance. Substitute House Bill 1402 is intended to correct that situation. The Department of Corrections (DOC) does not supervise misdemeanants from other states. Under the compact, the DOC will not have to supervise all misdemeanants. Rather only those misdemeanants that have committed serious crimes would be subject to supervision. Additionally, the compact will require notice of who is coming into our state. The DOC does not have to accept all of these offenders. The DOC retains the right to screen those offenders coming in and can refuse to take those offenders who do not have sufficient ties to this state, such as family ties or a job. The Sentencing Guidelines Commission believes it is absolutely imperative to pass this law.

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

**Testimony Against:** (Appropriations) None.

**Persons Testifying:** (Criminal Justice & Corrections) Ida Leggett, Executive Director, Sentencing Guidelines Commission; and Doreen Geiger, Department of Corrections.

**Persons Testifying:** (Appropriations) Ida Leggett, Sentencing Guidelines Commission.

**Persons Signed In To Testify But Not Testifying:** (Criminal Justice & Corrections) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.