

HOUSE BILL REPORT

HB 2417

As Reported by House Committee On:
Public Safety

Title: An act relating to individuals serving community custody terms.

Brief Description: Concerning individuals serving community custody terms.

Sponsors: Representatives Davis and Peterson.

Brief History:

Committee Activity:

Public Safety: 1/21/20, 1/30/20 [DPS].

Brief Summary of Substitute Bill

- Modifies the requirements for sanctioning violations of community custody conditions.
- Requires the Department of Corrections (DOC) to collect and report on data on community custody violations and sanctions.
- Requires the DOC to contract with an independent third party to conduct a comprehensive review of the community corrections staffing model.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Kelly Leonard (786-7147).

Background:

Community Custody. Community custody is the portion of a person's criminal sentence served in the community under the supervision of the Department of Corrections (DOC) following his or her release from confinement in a state correctional facility. Courts are

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mandated to order community custody for persons convicted of certain crimes. The term of community custody varies depending upon the underlying offense and the person's risk to reoffend.

While on community custody, a person is subject to conditions imposed by the court and the DOC. The DOC may establish and modify conditions based on risks to community safety. The DOC may issue warrants for the arrest of any person who violates a condition of community custody. If a person violates the conditions, he or she may be subject to sanctions.

Sanctions. In 2012 the state established statutory requirements for sanctioning violations of community custody, commonly referred to as "swift and certain" (SAC). The SAC requirements generally rely upon immediate and brief confinement sanctions in lieu of long-term confinement sanctions. The DOC is required to adopt rules classifying types of violations as "low level" or "high level," as well as rules for aggravating and mitigating factors. The statutory requirements then direct certain sanctions based on those classifications and factors, as follows:

- For the first low-level violation, the DOC may impose one or more nonconfinement sanctions.
- For the second, third, fourth, and fifth low-level violation, the DOC may impose up to three days of confinement.
- For the sixth and subsequent low-level violation, any low-level violation with aggravating factors, and any high-level violation, the DOC may impose up to 30 days of confinement, subject to a hearing.

The DOC may arrest persons for violating conditions. If a violation constitutes a new criminal offense, the DOC must report the conduct to the local law enforcement agency or prosecuting attorney. The report functions as notice that the DOC will hold the person in confinement for no more than three days. However, for certain persons with qualifying underlying felony convictions, the DOC must hold the person in confinement for 30 days from the time of arrest or until a prosecuting attorney charges the person with a crime, whichever occurs first. Persons with the following underlying felony convictions are subject to those restrictions:

- Assault in the first degree;
- Assault of a Child in the first or second degree;
- Burglary in the first degree;
- Child Molestation in the first degree;
- Commercial Sexual Abuse of a Minor (CSAM) or Promoting CSAM;
- Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Homicide by Abuse;
- Indecent Liberties with forcible compulsion;
- Indecent Liberties with a person capable of consent;
- Kidnapping in the first degree;
- Murder in the first or second degree;
- Rape in the first or second degree;
- Rape of a Child in the first or second degree;
- Robbery in the first degree;
- Sexual Exploitation of a Minor; or

- Vehicular Homicide while under the influence of intoxicating liquor or any drug.
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Summary of Substitute Bill:

Sanctions. The tiered sanction requirements for low-level violations are removed. Instead, any low-level violation may be sanctioned with either a nonconfinement sanction or up to three days of confinement.

The requirement for a sixth or subsequent low-level violation to be automatically sanctioned as a high-level violation is removed. Instead, the DOC has the discretion to treat a sixth or subsequent violation as a high-level violation, so long as the decision to elevate a violation complies with policies and rules established by the DOC. In this context, this allows the DOC to impose either low-level sanctions (up to three days of confinement) or high-level sanctions (up to 30 days of confinement, subject to a hearing).

The requirement for holding a person with a qualifying underlying felony conviction who commits a new crime while on community custody is modified. The person must be held in total confinement for 30 days, until the prosecuting attorney files new charges against the offender, or until the prosecuting attorney provides written notice to the DOC that new charges will not be filed, whichever is sooner. Therefore, the DOC must release the person when receiving notice that new charges will not be filed.

The DOC must track and collect data and information on violations of community custody conditions and the sanctions imposed for violations, which must include specified data points and trends. The DOC must annually report to the Governor and Legislature, beginning November 1, 2021.

Staffing. Subject to an appropriation, the DOC must contract with an independent third party to provide a comprehensive review of the community corrections staffing model and develop an updated staffing model for use by DOC. The updated model must include additional time and flexibility for community corrections officers to focus on case management, engagement, and interventions. The DOC must submit a report, including a summary of the review and update, to the Governor and Legislature by July 1, 2021.

Substitute Bill Compared to Original Bill:

The substitute bill allows the DOC to elevate a sixth or subsequent low-level violation of community custody to a high-level violation (rather than requiring it as in current law and removing the process as in the original bill). Language is added specifying that any decision to elevate a violation must comply with policies and rules established by the DOC.

The substitute bill restores specialized sanction requirements imposed upon persons with certain underlying felony convictions who commit new offenses while on community custody, except language is added providing that the person is released if the prosecuting attorney notifies the DOC that new criminal charges will not be filed.

A data collection requirement is added. The DOC must track and collect data and information on violations of community custody conditions and the sanctions imposed for violations, which must include specified data points and trends.

Also, the DOC must contract with an independent third party to provide a comprehensive review of the community corrections staffing model and develop an updated staffing model for use by the DOC. The report on the review is due to the Governor and Legislature by July 1, 2021.

A technical correction is made to provide that the policy applies retroactively and prospectively, regardless of the date of the offense (rather than retrospectively and prospectively).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Legislature implemented SAC in 2012 based on the best research at the time. It is built around the concept that shorter, defined sanctions imposed quickly are more effective at redirecting behavior than longer confinement sanctions imposed after protracted administrative procedures. The SAC is also aimed at reducing disparities by providing that community corrections officers impose consistent, predictable sanctions in every case. However, there have been some unintended consequences resulting from certain aspects of SAC.

The sanction requirements do not take into account the circumstances or nature of low-level violations, including intervals between violations, general progress (or lack of progress), the underlying causes of the violation behavior, and working and living conditions. Many persons have been sanctioned and sent to jail at critical moments in their reentry. There are numerous examples of persons who have recently procured housing and employment, entered treatment, or reestablished parental relationships, only to be sanctioned with jail time for missing an appointment, failing to update an address with the DOC, or failing a urinalysis test. Going to jail moves them backward, not forward. This is especially the case for persons with a sixth or subsequent violation that automatically results in up to 30 days in jail.

The SAC created structure and fairness, but it did not create options for supporting reentry. This bill strikes the appropriate balance. The CCO needs discretion for determining the type of sanction to be imposed, taking into account periods of compliance and other protective factors. It will be based on the risk-needs responsiveness model, where accountability is delivered in a manner that does not disrupt progress. In certain cases, it can be counterproductive to disrupt the prosocial and productive aspects of a person's reentry,

including housing, employment, and treatment. The sanctions should be meaningful and match the behavior. Sometimes confinement will be appropriate, and the CCO can select a sanction based on DOC policies in light of the particular context.

Greater flexibility for imposing sanctions is part of a larger effort to facilitate successful reentry, but also to reduce complexity for the DOC. This bill, along with other proposals, are steps in the right direction.

(Opposed) The SAC model was developed by a leading expert, and it is informed by science. Timeliness and certainty of sanctions are very important. This undermines the SAC model and places the community at risk. It will result in CCOs imposing ineffective, nonconfinement sanctions for potentially serious violations.

The bill will also reintroduce bias and inconsistency into sanction practices, where different CCOs will impose different sanctions for the same types of violations. The current SAC model is preferable, as it provides consistency between CCOs and predictability for offenders. Offenders with lenient CCOs will take more risks and violate conditions more often, endangering themselves and the community.

Some offenders can be very difficult to stabilize. The SAC is a critical tool for redirecting behavior and facilitating reentry. Washington already has one of the lowest rates of confinement for supervision sanctions. This bill is unnecessary. It is unclear if the intent of the bill is actually to generate savings for the DOC. Cost should not be the determining factor in making this policy decision.

(Other) The Washington State Criminal Sentencing Task Force reviewed this proposal and ultimately did not take a position on it.

Persons Testifying: (In support) Representative Davis, prime sponsor; Stephen Sinclair, Mac Pevey, Lillian Wilbur, and Sarah Lewis, Department of Corrections; and Sarai Cook, Civil Survival.

(Opposed) Don Malo and Jim Furchert, Washington Federation of State Employees; Chuck Carter, Department of Corrections; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.