

SENATE BILL REPORT

SB 5749

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 21, 2003

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: Senators Hargrove, Stevens and Rasmussen; by request of Indeterminate Sentence Review Board.

Brief History:

Committee Activity: Children & Family Services & Corrections: 2/19/03, 2/21/03 [DPS].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5749 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Fara Daun (786-7459)

Background: In 2001, 3ESSB 6151 established determinate-plus sentencing for sex offenders convicted of a first "2-strikes" offense and for offenders with a prior "2-strikes" offense who subsequently are convicted of a new sex offense. Under determinate-plus sentencing, the offender receives the sentence that he or she would normally receive under the Sentencing Reform Act as a minimum sentence plus a maximum sentence equal to the statutory maximum sentence permitted by law. During the period between the minimum and maximum sentence, the offender is to be released to community custody unless he or she is found to be more likely than not to commit new sex offenses.

The Indeterminate Sentence Review Board (ISRB) was given the authority over these offenders and the authority to impose sanctions for violations of release conditions. The provisions regarding offenders sentenced to a determinate-plus sentence were separated from those provisions for parole under indeterminate sentencing for crimes committed before July 1, 1984. The legislation distinguished community custody from parole by distinguishing the two standards for release and by requiring the ISRB to develop hearing procedures and a structure of graduated sanctions for community custody consistent with those developed by the Department of Corrections (DOC) for community custody under the Offender Accountability Act of 1999. The legislation also anticipated that the ISRB would enter an agreement with DOC to use its hearings officers.

The statute required the procedures to include a number of elements. These elements included time frames requiring a hearing within five days if the offender was held in confinement and 15 days if the offender was not held in confinement and were identical, except in one instance, with those set out under the Offender Accountability Act. Because, however, the possible result of a revocation hearing under 3ESSB 6151 is life in prison, these offenders under determinate-plus sentencing have the right to an attorney if revocation of community custody is a possible sanction for a violation. The Offender Accountability Act does not include the right to an attorney.

Summary of Substitute Bill: The time frames for community custody violation hearings are changed to 30 days whether or not the offender is in confinement from five days if the offender is confined and 15 days if the offender is not confined.

An offender's right to an attorney for a violation hearing is changed from those hearings in which revocation of release to community custody is "possible" to those in which it is "probable."

Hearings may be conducted by a designee of the board.

Substitute Bill Compared to Original Bill: Two provisions are added codifying current practice to ensure that requirements continue to meet constitutional standards. The first new provision requires the ISRB to make a probable cause determination within 48 hours of the allegation. The second provisions states that no offender's release to community custody may be revoked unless he or she was represented by counsel at the revocation hearing or waived the right to counsel.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The ISRB is concerned about its ability to meet the upcoming demand. The addition of the word "designee" would allow the board's current hearing officers to hear these violation hearings. These are well trained and experienced persons and will delay the need to increase the number of board members. The changes would make the statute more consistent with the process that the ISRB currently uses. The change to 30 days for the hearing reflects the realistic ability to have such a hearing and eliminates the likelihood of continuances in every case. The board currently recognizes that the right to counsel would attach if an offender was subject to a revocation of community custody whether that might subject the offender to life or to a period of two years in prison.

Testimony Against: The bill violates due process in three ways. First, by allowing designees, the offender is not getting the expertise now required in a decision whether to revoke his or her community custody. Second, the shift from a requirement for a hearing within five days or 15 days to 30 days violates U.S. Supreme Court rulings on the rights of parolees. Third, the right to counsel attaches when a person is going to be sent back to prison for life even when the process is administrative. The grid is new and with the grid, there is no need to change the language.

Testified: Cassandra Stam, Washington Association of Criminal Defense Lawyers, Washington Defender Association (con); Dick Van Wagenen, Office of Financial Management (pro).