

SENATE BILL REPORT

E2SSB 5070

As Passed Senate, March 10, 2007

Title: An act relating to reduction of offender recidivism.

Brief Description: Changing provisions affecting offenders who are leaving confinement.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Carrell, Regala, Hargrove, Kline, Weinstein, Stevens, Brandland, Parlette, McCaslin, Kastama, Holmquist, Zarelli, Pridemore, Schoesler, Clements, Rasmussen, Swecker, Roach, Franklin, Delvin, Sheldon, Eide, Spanel, Hewitt, Hatfield, Keiser, Pflug, McAuliffe, Berkey, Haugen, Fairley, Murray, Tom, Kohl-Welles, Shin and Kilmer).

Brief History:

Committee Activity: Human Services & Corrections: 1/11/07, 2/21/07 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/28/07, 3/05/07 [DP2S].

Passed Senate: 3/10/07, 47-1.

Brief Summary of Bill

- Existing law is changed and new provisions are added that impact offenders returning to the community from confinement in the following areas: work release, supervision, educational programming, employment barriers, housing, and civil rights.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5070 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell and McAuliffe.

Minority Report: Do not pass.

Signed by Senator Marr.

Minority Report: That it be referred without recommendation.

Signed by Senator Brandland.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Second Substitute Senate Bill No. 5070 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Richard Ramsey (786-7412)

Background: According to the Department of Corrections (DOC), approximately 8,500 offenders return to the community from Washington prisons each year after completing their sentences and over 25,900 offenders are currently on active supervision in the community. Research from the Washington State Institute of Public Policy (WSIPP) shows that approximately 54 percent of these offenders will commit a new felony within 13 years. Further, the Washington Caseload Forecast Council estimates that under existing policies, Washington's incarceration rate will increase 23 percent by the year 2019.

In 2005, the Legislature directed the WSIPP to report, by October 2006, whether evidence-based and cost-beneficial policy options exist to alleviate the need to build more prisons. WSIPP concluded that several programs directed to adult offenders can have a positive impact on recidivism and produce significant cost savings for the state of Washington (see Steve Aos, Marna Miller, and Elizabeth Drake (2006). *Evidence-Based Public Policy Options to Reduce Future Prison Constructions, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy).

The 2006 Legislature created the Joint Task Force on Offenders Programs, Sentencing, and Supervision (SSB 6308). The legislation required the Task Force to review offender programs, sentencing, and supervision of offenders upon reentry into the community with the stated goals of increasing public safety, maximizing rehabilitation of offenders, and lowering recidivism. The Task Force made many recommendations, several of which are incorporated in this bill.

Summary of Engrossed Second Substitute Bill: PART I - Community Transition Coordination Networks: Each county or group of counties are required to conduct an evaluation of the services available in the county or region to assist offenders in reentering the community and present its assessment to the policy advisory committee no later than January 1, 2008.

A community transition coordination network program (CTCN) is created within the Department of Community, Trade and Economic Development (CTED). The CTCN program is a pilot project to be conducted in up to four counties for a period of four years and is limited to offenders under county or city misdemeanor probation.

CTED must invite counties or groups of counties to apply for grant funds to facilitate partnerships between supervision and service providers. Among other components, it is anticipated that a county or group of counties wishing to implement a network will collaborate with DOC, address methods to identify offenders' needs, and connect the offender with needed resources and services that support successful transition.

Counties receiving grant funds must work with WSIPP to establish data tracking mechanisms and conduct an evaluation at the completion of the pilot program. CTED must convene a policy advisory group to receive status reports on the implementation of the networks and review annual evaluations. The grant program expires June 30, 2013.

The purpose of local law and justice councils is expanded to include the review of issues related to mechanisms for communication of information about offenders and partnerships between the department and local community policing and supervision programs.

PART II - Liability: The state, local government or its employees are not liable for acts or omissions in providing supervision services, including assessment and services associated with an individual reentry plan, unless the act or omission constitutes gross negligence.

PART III - Individual Reentry Plan: DOC is required to develop an individual reentry plan for every offender committed to the jurisdiction of the department.

An individual reentry plan is the result of a comprehensive assessment of an offender initiated at the time the offender enters the criminal justice system. The plan should address both the risks and needs of the offender and describe actions needed to prepare an individual for release, define terms and conditions of release, and address the supervision and services needed in the community.

PART IV - Partial Confinement and Supervision: WSIPP is required to conduct an analysis of reentry and work release programs to identify evidence-based practices for the state of Washington. The institute should identify optimal services or combination of services to be provided to offenders reentering the community through work release programs. DOC is, in turn, required to review its policies to transform its work release facilities into effective residential reentry centers.

DOC must continue to establish Community Justice Centers (CJC) throughout the state. In addition to the six existing facilities, three more facilities must be added by December 1, 2011. DOC must notify the county and/or city prior to locating a new CJC in the community. DOC must make efforts to enter into memoranda of understanding or agreements with the local community policing and supervision programs to address efficiencies in sharing space or resources, mechanisms of communication, and partnerships between police and corrections officers in conducting supervision.

DOC must prepare a list of counties in which work release facilities and CJCs are anticipated to be located within the next three years and transmit the list to OFM and the counties on the list.

In order to qualify for 50 percent earned release an offender must participate in programming and must not have committed a new felony while under supervision. If the department denies transfer to community custody in lieu of earned early release, the department may transfer an offender to partial confinement in lieu of earned early release for up to three months.

If an offender has not completed his or her maximum term of total confinement and commits a third violation of any condition of community custody, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence. The department may choose not to return the offender to prison

if it determines that returning the offender would interfere with the offender's rehabilitation and reintegration into the community.

An offender who is sentenced on or after the effective date and who is returned to prison to complete the remainder of his or her sentence is subject to twelve months community supervision after release. An offender who is arrested while on community custody for a new felony offense must be held in total confinement until a DOC hearing on the violation or until being formally charged by the prosecutor, whichever is earlier. An offender sanctioned to total confinement must serve the entire sanction in total confinement.

DOC must review laws and policy regarding the supervision of offenders through the DOC. The Sentencing Guidelines Commission must review state sentencing laws and policies in order to simplify supervision requirements.

PART V - Education: DOC is to fund basic academic skills through obtaining a high school diploma or its equivalent; achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release; and additional work and education programs necessary for compliance with an offender's individual reentry plan (except post-secondary education).

Other appropriate vocational, work or education programming that does not meet the above requirements must be paid by the inmate according to a sliding scale formula.

A third party may pay all or a portion of the costs and tuition for any programming. Payments for this purpose must not be subject to any of the deductions as provided in RCW 72.09.

A postsecondary education degree program is created. An inmate must pay for the program by paying for the program themselves, receiving funding from a third party, or by obtaining a loan from the department. DOC must establish a process for awarding loans to the extent that funds are appropriated or donated for that purpose. The inmate must repay the loan beginning two years after release. The loan does not accrue interest. Money collected is reinvested in the loan program.

DOC and the State Board for Community and Technical Colleges must investigate and review methods to optimize educational and vocational programming opportunities for offenders. DOC and the State Board must report to the Governor and the Legislature no later than November 15, 2007.

WSIPP must conduct a comprehensive analysis and evaluation of evidence-based correctional education programs and the extent to which Washington's programs are in accord with these practices. The Institute must report to the Governor and the Legislature no later than November 1, 2007.

PART VI - Employment Barriers: A business and occupation tax credit or utility tax credit is allowed for employers who hire previously incarcerated individuals and meet certain criteria. The credit is \$1,000 per qualifying employee who worked at least 780 hours in the first year of employment.

The Department of Licensing and DOC must enter into an agreement to assist offenders in obtaining driver's licenses. The Department of Licensing must also convene a work group to

review and recommend changes to occupational licensing laws and policies to encourage the employment of individuals with criminal convictions while ensuring the safety of the public.

PART VII - Housing: A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents that he or she has a policy of renting to offenders.

Housing authorities are encouraged to formulate policies that are not unduly burdensome to previously incarcerated individuals.

The Offender Reentry Transitional Housing Assistance Program is created in CTED. DOC is required to cooperate with CTED in determining an appropriate formula for the distribution of funds and developing rules, requirements and procedures for operation of the program. DOC is required to cooperate with organizations receiving grant funds to identify appropriate housing solutions, facilitate an offender's application for housing and assist the offender in accessing appropriate services.

An offender may obtain the release of funds from his or her inmate savings account prior to discharge for the purpose of securing appropriate housing.

PART VIII - Restoration of Civil Rights: A convicted felon's right to vote is provisionally restored once he or she is no longer under the authority of DOC (no longer confined and no longer under supervision). The sentencing court may revoke the provisional restoration of voting rights if the person willfully fails to comply with the terms of his or her legal financial obligations.

PART IX - Oversight Committee: A Legislative Corrections Oversight Committee is created to monitor activities of DOC and ensure compliance with relevant statutes, laws, and policies. Among other duties, the committee may request and receive reports regarding implementation of the recommendations of the joint task force on offenders programs, sentencing and supervision as well as the provisions of this act, and monitor coordination and collaboration between local government and the department.

Appropriation: \$32.8 million State General Fund.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

CON: Landlords do not support the provisions of section 601 to allow third parties to utilize provisions of Landlord Tenant Act to evict tenants.

OTHER: Education: Good quality education and job training are important to the successful reintegration of offenders. Supporters wanted to ensure that funding would also be made available to expand programming.

Some felt the bill does not go far enough, such as restoring the Associate of Arts degree program. More educational opportunities should be available for offenders in the community

after release. Faculty also needs to be more involved in the educational programs and studies mandated by this bill.

Civil Liability: Civil liability is important to victims and to ensure the safety of the public. The language of section 104 is too broad in providing entities immunity from liability for supervision activities.

As local governments are being required to work ever closer with DOC for supervision, the same gross negligence standard should apply to local governments for misdemeanor liability that applies to DOC. The Attorney General's Office was concerned that some provisions of this bill seem to increase the liability of DOC and make it difficult for them to manage risk and liability.

Transition Networks: It is important to define the partnerships between Community Corrections Officers (CCOs) and law enforcement as well as the roles and responsibilities of team members. More administrative oversight should be built into the process.

The community transition coordination network should remain voluntary and be a pilot program. "Assessment" is not the appropriate term in section 102 as the counties are not making qualitative assessments. "Inventory" is more appropriate. Local government also wants to make sure that this is a funded mandate. Generally, while programs may decrease costs for the state and the need for prisons, this does not necessarily translate to reduced costs for local government.

Sentencing and Supervision: Truth in sentencing should be restored. This bill does nothing to address problems of offenders getting half off of their prison sentence from the start and class C & D offenders receiving no effective supervision. Concerns were also expressed regarding the process for multiple violations. While the intent may be to address the need for more severe sanctions for multiple violators, this provision may have the opposite effect because the court process is slow.

Supervision provisions address the concerns of CCOs. Pre-sentencing should be restored. Assessment should start before the offender is brought in front of the judge. Victims' safety concerns need to be included in many areas of the bill.

Housing: Support was expressed for continued funding through DOC for housing, but provisions should mandate how DOC will provide assistance.

Work Release: Support was expressed for the work release study to be completed by WSIPP and making sure that work release is available throughout the state. Some concerns were noted with increasing the allowable time for partial confinement, particularly before completion of the study and addition of other programming within that context.

Voting: Restricting an offender's right to vote based on payment of Legal Financial Obligations does not serve to enhance collection and conversely serves to hinder reentry process. Restoration of voting rights is an important issue and should be addressed.

Persons Testifying (Human Services & Corrections): CON: John Woodring, Washington Apartment Association, Rental Housing Association.

OTHER: Harold Clarke, DOC; Ari Kohn, Post-Prison Education Program; Dave Johnson, WCCVA; Russ Hauge & Tom McBride, WAPA; Debbie Wilke, WA State Sheriff's Association; Tim Boutz, Correctional Education Association; Kathy Goebel, SBCTC; Don Pierce, WASPC; Chief Larry Saunders, WASPC/City of Lakewood; Jennifer Shaw, ACLU; Rashi Gupta, Pierce County; Seth Dawson, WA State Coalition for the Homeless; Tammy Fellin, Association of Cities; Sophia Byrd McSherry, Association of Counties; Glen Anderson, OAG; Larry Shannon, WSTLA; Ginger Richardson, WFSE; Amber Lewis, WFSE; Bob Markholt, Seattle Vocational Institute; Jim Tharpe, Unity House.

Staff Summary of Public Testimony (Ways & Means): PRO: The bill does address the concerns raised by recent news reports about community supervision. It provides partnerships for local law enforcement agencies with the Department of Corrections in implementing recidivism reduction. It will lead to safer communities at reduced cost. This is a courageous bill because of the investments in offender education. Inmates with two years of college reoffend only 10 percent of the time. Of 250 offenders taking post secondary coursework at the Washington State Penitentiary, there were 313 degrees earned and a recidivism rate of 12 percent.

CON: The bill relies upon work release programs that are not proven to reduce recidivism. There is a higher rate of recidivism associated with work release than those released directly from prison. The Legislature should slow down investments that are not evidence-based. If you want local government to participate, then address their issues. Section 603 imposes liability on businesses and restricts the free flow of information to protect the community.

OTHER: We have a concern that if appropriations are removed from the bill the funding will get lost in the budget. Section 405 on sanctions for violations of supervision will result in 60 days in local jails. We'd rather have the sanctions language removed altogether. Funding for the county inventory associated with the community transition coordination networks is very important.

Persons Testifying (Ways & Means): PRO: Senator Carrell, prime sponsor; Larry Saunders, Washington Association of Sheriffs and Police Chiefs; Ari Kohn, Post-Prison Education Program.

CON: Bertha Fitzer, Pierce County Prosecutor's Office.

OTHER: Sophia Byrd McSherry, Washington State Association of Counties.