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## Human Services Committee

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### HB 1839

**Brief Description:** Improving the resources and tools community corrections officers and law enforcement need to perform their duties protecting the public.

**Sponsors:** Representatives Pearson, Dammeier, Priest, Hinkle, Kristiansen, Smith, McCune, Ross, Walsh, Schmick, Cox, Haler, Klippert, Orcutt, Bailey, Rodne, Newhouse, Chandler, Roach, Warnick, Angel, Hope and Johnson.

#### Brief Summary of Bill

- Authorizes the Department of Corrections (DOC) to require an offender sentenced to community custody to submit to searches without reasonable cause to believe that he or she has violated a condition or requirement of his or her sentence if the search is a condition of the offender's community custody.
- Authorizes community corrections officers (CCOs) to inspect the person, residence, automobile, or other personal property of an offender under its supervision in the community whenever the CCO has reasonable cause to believe that the offender has violated a condition of his or her sentence.
- Authorizes CCOs to perform random, unannounced inspections of the person, residence, automobile, or other personal property of every offender under the supervision of the DOC pursuant to a term of community custody. Requires the CCO to document his or her rationale for conducting such inspections.
- Provides immunity for CCOs for civil damages arising from an act or omission pursuant to his or her assistance to law enforcement, at the request of law enforcement, unless the act or omission constitutes gross negligence.
- Provides immunity for CCOs for civil damages arising from an act or omission resulting from the CCO's interaction with a third party attempting to intervene during the CCO's contact with an offender under his or her supervision.
- Requires a DOC hearing officer to give due consideration to the CCO's recommendation regarding the sanction for an offender who has violated a condition of community custody.

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*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.*

- Permits a DOC hearing officer to impose the maximum sanctions allowed regardless of the response option range or violation response score for the particular offender.
- Requires the DOC to develop a plan, using the existing staffing matrix, to reduce the supervision caseload of CCOs by December 1, 2010, and to increase partnerships, such as the Neighborhood Corrections Initiative.
- Requires the DOC to hire additional CCOs to the extent that funding is provided in the operating budget.

**Hearing Date:** 2/9/09

**Staff:** Linda Merelle (786-7092)

**Background:**

Searches of Offenders In and Out of Custody.

Searches without a warrant are generally unreasonable *per se* unless it is demonstrated that public interest justifies creation of an exception to the general warrant requirement. An offender who is under the supervision of the Department of Corrections (DOC) has a diminished right to privacy.

A prisoner is not wholly stripped of constitutional protections when they are imprisoned for a crime, but many of a prisoner's rights and privileges are subject to limitation because institutional goals and policies take precedence. However, a prisoner has no reasonable expectation of privacy in his prison cell entitling him or her to the protection of the Fourth Amendment of the United States Constitution against unreasonable searches. For circumstances outside of a prison cell, the reasonableness of a search must be determined by balancing the need for the particular search against the invasion of the personal rights that the search entails. Under Washington law, routine pat-down searches of prisoners are permissible even where there is no articulable suspicion.

For offenders who are out of custody and under the supervision of the DOC, the Fourth Amendment of the United States Constitution and Article 1, Section 7 of the Washington State Constitution require that a community corrections officer (CCO) have reasonable cause or a well-founded suspicion that the offender has violated the conditions of his or her supervision before conducting a warrantless search. If the CCO has a reasonable or well-founded suspicion, he or she may search an offender's person, automobile, residence, or personal property without obtaining a warrant. Reasonable cause must be based upon a well-founded suspicion that a probation violation has occurred.

A well-founded suspicion is analogous to the cause requirement of a *Terry* stop (contact with a police officer) in that it must be based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a search. A reasonable suspicion requires only sufficient probability, not absolute certainty. A well-founded suspicion is a lesser standard of proof than probable cause.

**Summary of Bill:**

### Legislative Findings.

The bill sets forth the findings that offenders in total confinement and offenders on community custody have the same expectation of privacy. As a result, requiring an offender on community custody, including escapees and absconders, to submit to random, unannounced inspections is therefore reasonable under the federal and state Constitutions. The court, when it sentences an offender, shall require the offender to submit to random, unannounced inspections of his or her person, residence, automobile, or other personal property.

### Search as Condition of Sentence.

Offenders may be required to submit to a search without reasonable cause to believe that the offender has violated a condition of his or her sentence if the search is made a condition of the sentence.

### Search Pursuant to Reasonable Cause of Violation of Condition of Supervision.

A CCO may inspect the person, residence, automobile, or other personal property of an offender, including escapees and absconders, under its supervision in the community whenever the CCO, based upon his or her professional judgment and discretion, has reasonable cause to believe that the offender has violated the condition of his or her supervision.

### Unannounced Random Searches.

The CCO, based upon his or her professional judgment and discretion, may perform random, unannounced inspections of the person, residence, automobile, or other personal property of every offender, including escapees and absconders, who is under the supervision of the DOC for a crime committed on or after the effective date of the act. The CCO must document his or her rationale for conducting an inspection under this section.

### Immunity for Community Corrections Officers.

The CCOs will not be held liable for civil damages arising out of an act or omission, unless their acts or omissions constitute gross negligence, that occurs when:

- the CCO provides assistance to a law enforcement officer at the request of the law enforcement officer; or
- the CCO interacts with a third party who is attempting to intervene when a CCO is contacting an offender under community custody or community supervision.

### Sanctions.

The DOC hearing officers must give due consideration to a CCO's recommendations regarding sanctions for violations, and the hearing officer shall have the option based on the hearing officer's professional determination and discretion, to impose the maximum sanction or sanctions allowed regardless of the "response option range" or "violation response score" of the offender based upon measures developed by the DOC.

### Reduction of Supervision Caseload.

The DOC must develop a plan, using the existing staffing matrix, to reduce the supervision caseload of CCOs by December 1, 2010, and increase partnerships, such as the Neighborhood Corrections Initiative. Prior to 2010, the DOC shall hire additional CCOs to the extent funding is provided in the operating budget.

This bill has a null and void clause.

**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2009.

**Effective Date:** The bill takes effect on August 1, 2009.