

HOUSE BILL REPORT

ESSB 5288

As Reported by House Committee On:

Human Services
Ways & Means

Title: An act relating to the supervision of offenders.

Brief Description: Changing provisions regarding supervision of offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala and Shin).

Brief History:

Committee Activity:

Human Services: 3/4/09, 3/26/09 [DPA];

Ways & Means: 4/4/09, 4/18/09 [DPA(WAYS w/o HS)].

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Revises the scheme under which the Department of Corrections (DOC) supervises offenders.
- Requires the DOC to supervise certain offenders convicted in superior court of fourth degree Assault or Domestic Violence Violation of a No Contact Order and offenders convicted of certain nonfelony sex-related offenses, including Failure to Register.
- Removes the requirement that the DOC supervise felony offenders whose risk assessments place them in a category of low or moderate risk.
- Requires the DOC, to supervise felony sex offenders whose sole offense is failure to register, in addition to supervising other sex offenders.
- Requires the DOC to assess the risk of an offender by using a "static" risk assessment tool developed by the Washington State Institute for Public Policy.
- Authorizes the DOC to issue warrants for the arrest of offenders under its supervision who are convicted of gross misdemeanor offenses and allows the DOC to impose sanctions on those offenders for violation of conditions of supervision.

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.

- Replaces community custody ranges with fixed terms of 36 months for sex offenders and those convicted of a serious violent offense, 18 months for offenders convicted of a violent offense that is not a serious violent offense, and 12 months for other offenses; periods of community custody for certain special offender sentencing alternatives remain unchanged.
- Requires the Sentencing Guidelines Commission to assess the effect of this act on adult recidivism and include the report in its biennial report due not later than December 1, 2011.
- Repeals 9.95.206 RCW and 9.95.212 RCW, and 2008 c 231 s 60 (uncodified).

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Dammeier, Ranking Minority Member; Green, Morrell and O'Brien.

Minority Report: Do not pass. Signed by 3 members: Representatives Orwall, Vice Chair; Klippert and Walsh.

Staff: Linda Merelle (786-7092)

Background:

Offender Accountability Act.

In 1999 the Legislature passed the Offender Accountability Act (Engrossed Second Substitute Senate Bill 5421). The Offender Accountability Act (OAA) extended community custody to all sex offenses, all crimes against persons, and all felony drug offenses. It required the Department of Corrections (DOC) to use a validated risk assessment and to supervise offenders according to their risk level. In 2003 the Legislature restricted the types of offenders that the DOC could supervise and increased the earned release time for certain offenders from one-third to 50 percent of their sentences.

Risk Assessment.

One purpose of the OAA is to reduce the risk of reoffense in the community. Under the OAA, the DOC is required to classify and supervise offenders according to their risk for recidivism. As a part of the OAA, the Washington State Institute for Public Policy (WSIPP) was directed to study the impact of the OAA on recidivism. In 2003 the WSIPP analyzed the validity of the DOC's risk assessment tool, the Level of Service Inventory-Revised (LSI-R). The LSI-R is a 54 question survey which includes "static" and "dynamic" risk factors. A static risk factor is a factor that cannot decrease, such as an offender's criminal history. A "dynamic" risk factor can decrease through intervention, such as an offender's drug dependency. In its analysis of the LSI-R, the WSIPP determined how the predictive accuracy of the LSI-R could be strengthened by including more static risk information about an

offender's prior record of offenses. The WSIPP developed a new tool for risk assessment which would have increased accuracy for predicting reoffense.

In approximately August 2008, the DOC began using the new static risk assessment tool to assign a probability of a subsequent conviction based upon the criminal history, age, and gender of Washington offenders. Instead of the risk categories of the LSI-R (A, B, C, and D, with A being the highest risk), the new tool identified the risk categories of: (1) high risk/violent; (2) high risk/nonviolent; (3) moderate risk; and (4) low risk.

Currently, the DOC must supervise any offender who has been sentenced to community custody if (1) the risk assessment tool places the offender in one of the two highest risk categories or (2) if the offender meets one of the following conviction criteria for either a current offense, a prior offense, or a special sentencing condition or status.

<i>Current Offense</i>	<i>Prior Conviction</i>	<i>Special Sentencing Conditions or Status</i>
Sex Offense	Sex Offense	Condition of offender's supervision includes chemical dependency treatment, including the Drug Offender Sentencing Alternative (DOSA).
Violent Offense	Violent Offense	Offender was sentenced pursuant to a First Time Offender Waiver (FTOW).
Crime against persons (does not include fourth degree Assault)	Crime against persons (does not include fourth degree Assault)	Offender was sentenced to a Special Sex Offender Sentencing Alternative (SSOSA).
Residential Burglary	Residential Burglary	Supervision is required by the Interstate Compact for Adult Offender Supervision.
Manufacture, Delivery, or Possession of Methamphetamine	Manufacture, Delivery, or Possession of Methamphetamine	
Delivery of a Controlled Substance to a Minor	Delivery of a Controlled Substance to a Minor	

The DOC must supervise every offender sentenced by a superior court to probation for a misdemeanor or gross misdemeanor. The DOC is prohibited from supervising any offender who does not fall within one of the above categories.

Warrant Authority.

The DOC has the authority to issue arrest warrants for felony offenders under its supervision and to impose sanctions on those offenders. The DOC does not have any authority to issue warrants for the arrest of misdemeanor offenders under its supervision nor to sanction them.

Community Custody Ranges.

When a court sentences a felony offenders to community custody, the following ranges may be imposed:

Type of Offense	Community Custody Range
Sex Offense	36 - 48 Months
Serious Violent Offense	24 - 48 Months
Violent Offenses	18 - 36 Months
Crimes Against Persons	9 - 18 Months
Drug Offenses (Except DOSA)	9 - 12 Months

Summary of Amended Bill:

The DOC must supervise all offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) under the new tool developed by the WSIPP and offenders who meet other criteria as described below:

<i>Two Highest Risk Categories</i>	<i>Regardless of Risk</i>	<i>Offenders sentenced to Probation for Misdemeanor/Gross Misdemeanor Offenses</i>
All offenders sentenced to community custody whose risk assessment places them in the either the high risk/violent or high risk/nonviolent category regardless of offense.	Felony sex offenders, except those sentenced to community custody only for failure to register as a sex offender.	Offenders convicted of: fourth degree Assault or Domestic Violence Violation of No Contact Order; and a prior conviction for: (i) violent offense; (ii) sex offense; (iii) crime against person; (iv) fourth degree Assault; or (v) Domestic Violence Violation of No Contact Order.
	All dangerous mentally ill offenders.	Offenders convicted of: (i) second degree Sexual Misconduct with a Minor; (ii) second degree Custodial Sexual Misconduct; or (iii) Communication with a

		Minor for Immoral Purposes.
	All offenders with an indeterminate sentence.	
	All offenders sentenced to DOSA, SSOSA, and FTOW.	
	All offenders required to be supervised under the Interstate Compact for Adult Offender Supervision.	

The DOC will not supervise any offenders assessed as a low or moderate risk.

Misdemeanor and Gross Misdemeanor Offenses.

The DOC must supervise offenders sentenced in superior court for fourth degree Assault or Domestic Violence Violation of a No Contact Order if the offender has a prior conviction as outlined in the above table. The DOC must also supervise offenders sentenced in superior court for certain misdemeanor or gross misdemeanor offenses, as demonstrated in the table above.

Under this bill, a county legislative authority may authorize a probation program for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and who may be sentenced to probation by a superior court. If authorized by the county, a superior court may sentence an offender convicted of a misdemeanor or gross misdemeanor to probation. Neither Washington nor the county are liable for any harm caused by the actions of an offender sentenced by the superior court to misdemeanor probation but who is not being supervised pursuant to a duly authorized superior court misdemeanant probation program. Washington, the relevant county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any act or omission in rendering probation services unless the act or omission constitutes gross negligence.

Retroactive Application.

This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the DOC, currently incarcerated, or sentenced after the effective date of the act.

Repealed Statutes.

Under this bill, 9.95.206 RCW, 9.95.212 RCW, and 2008 c 231 s 60 (uncodified) are repealed.

Emergency Clause.

Sections 1, 4 - 8, 10, 11, and 14 are subject to an emergency clause.

Expiration Dates.

Section 1 of the act expires on August 1, 2009.

Amended Bill Compared to Original Bill:

The DOC must supervise misdemeanor and gross misdemeanor offenders sentenced in superior court for fourth degree Assault, Domestic Violence Violation of a No Contact Order, and certain sex-related offenses for which registration is required.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 4 - 8, 10, 11, and 14, relating to categories of offenders for Department of Corrections supervision, supervision of misdemeanants, and retroactivity, which contain an emergency clause and take effect immediately; and sections 2, 3, and 9, relating to categories of offenders for Department of Corrections supervision, risk assessment, and the expiration of provisions passed in 2003, which take effect August 1, 2009.

Staff Summary of Public Testimony:

(In support) Public safety is a big issue, and there is a very large budget issue to deal with. Regarding the new assessment tool, when the researchers looked at the supervision scheme, they looked at over 70,000 cases. It took a couple of years to determine a likelihood of supervision. For the level of supervision, we were not getting anything out of it. Initially, we started with a bill that had no supervision for offenders whose risk level was determined to be low or moderate. Having six months of supervision would give those offenders an opportunity to violate. Multiple violations would increase the risk offense level. In the Governor's budget, the suggestion was to reduce the supervision of misdemeanors and some low risk offenders and a reduction of an overall length of supervision. The reduction of the length of supervision is not in the bill. Money is primarily saved by laying off staff. No one with a current conviction for a sex offense will escape supervision.

(In support with concerns) This measure will have some level of an adverse impact on community safety. This bill is not going to get us where we want to go. If we make further cuts, the supervision of low and moderate offenders would be the place to make those cuts. It is not clear whether the level of supervision of misdemeanors has had a marked impact. The question is "which cuts are going to do the least damage?" The supervision of low and moderate risk offenders does not ever involve a face-to-face contact and is not effective. It should be eliminated. The supervision of misdemeanor offenders out of superior court is a

big chunk of the savings in the bill. We may want to look at the length of community custody, but not at increased earned release time or to remove incentives to do treatment programs.

(With concerns) Under the provisions of this bill, the courts will leverage supervision by requiring chemical treatment as a condition which would displace those who really need treatment.

(Opposed) Prosecutors are concerned about the lack of the accountability under this bill. This bill would not recognize the nature of sex offenders. We should take time to look at the new assessment tool to see how it works. Let's not lose all of the ground gained regarding community safety and sex offenders. The static risk assessment tool is not accurate in assessing all offenders. It contradicts what we know about sex offenders. Sex offenders and domestic violence offenders affect victims more strongly than other kinds of offenders. This bill could harm community safety. We are making legislation of a tool that is only 50 percent accurate. It has only been used since August of 2008. It is scoring on an automated system. This is not smart legislation. Good supervision of low or moderate offenders is effective. We have no faith that the assessment tool is scoring properly. Maybe hand scoring would make a difference.

(Information only) There is not a problem with the scoring on the new assessment tool. This tool was rolled out after a long development. It is an aggregate tool. There is nothing out there that is any better.

Persons Testifying: (In support) Senator Hargrove, prime sponsor; Eldon Vail, Department of Corrections; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(In support with concerns) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Victoria Roberts, Department of Social and Health Services, Division of Alcohol and Substance Abuse.

(Opposed) Megan Allen and Lindsay Palmer, King County Sexual Assault Resource Center; and Dana Hufford, Cindy McHie, Judith Lang, and Ginger Richardson, Washington Federation of State Employees.

(Information Only) Eldon Vail, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Human Services. Signed by 13 members: Representatives Linville, Chair; Ericks, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Sullivan.

Minority Report: Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross, Schmick and Seaquist.

Staff: Alex MacBain (786-7288)

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Human Services:

The Committee recommended that the DOC must supervise all felony, gross misdemeanor, and misdemeanor sex offenders, including those whose sole offense is failure to register, regardless of risk classification. The Committee recommended providing the DOC the authority to issue warrants for the arrest of and to sanction misdemeanor offenders under its supervision. The Committee recommended eliminating the current community custody ranges and replaced them with fixed terms of 36 months, 18 months, and 12 months. Offenders convicted of a sex offense or a serious violent offense will have a 36-month term of community custody. An offender convicted of a violent offense that is not a serious violent offense will be placed on community custody for a period of 18 months. Offenders convicted of a crime against a person as defined in statute, or certain felony drug offenses, the term will be 12 months. The Committee also recommended requiring the Sentencing Guidelines Commission to report on the effect of this act on adult recidivism. The Committee recommended other technical amendments.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 3, 11, 13, 16, 17, and 20, relating to categories of offenders for Department of Corrections supervision, supervision of misdemeanants, and retroactivity, which contain an emergency clause and take effect immediately; and sections 2, 4 - 10, 12, and 14, relating to categories of offenders for Department of Corrections supervision, risk assessment, and the expiration of provisions passed in 2003, which take effect August 1, 2009.

Staff Summary of Public Testimony:

(In support) Last December counties were adopting budgets for 2009. Making those reductions wasn't pleasant, much like what the state is facing in this budget. Working on that process made us look at this upcoming legislative session and decide that there needed to be some options for you in how to make cuts in the DOC budget, because it wasn't going to be realistic for us to stand in front of you and say there will be no cuts for public safety.

And this bill is a big piece of how you do the least amount of harm to public safety while making cuts in the DOC budget. Essentially it eliminates low risk supervision, which runs the gamut from kiosk reporting to banked cases, and which we believe has not been successful in reducing recidivism.

This bill has been negotiated with stakeholders and the Governor to lessen the devastation that's already going on in other parts of the safety net that people in the state rely on. The money saved in this part of the budget can do more good in other parts of the budget in this difficult year.

The amendments made in the Human Services Committee did a good job of trying to carve out the assaultive misdemeanants for supervision, and remove supervision for low risk felons that was added in the Senate. We think that those were good decisions that will have the least damage on public safety.

In this situation, where the Legislature has to make cuts, this bill makes the right cut that does the least amount of damage and the elected prosecutors are in support of this bill.

(Opposed) There are two poor policy decisions included in this bill. First, the safety of the community is put at risk due to the reliance on a static risk assessment tool which may not accurately measure risk because it does not take into account behavior factors. Second, community supervision does work, and this bill reduces the number of community corrections officers and the number of offenders that will be supervised.

It takes human intervention, the ability to be able to sit down with an offender and make the cognitive thought processes and changes happen in order to make that person change.

Prison doesn't change offenders. The House budget takes close to 300 community corrections officers off the street and this bill is going to be responsible for half of those. The Governor's budget takes up to 500 of them off the street. That is half the public safety component workforce of community corrections. When you start cutting half of the forces that are protecting the public with offenders getting out of prison, you're flirting with disaster. So if it comes down to it and you're going to have to look for cuts, look at evidence based practices and realize that you are better off keeping the community supervision and getting offenders out of prison. It costs anywhere from \$28,000 to \$33,000 a year to put somebody in prison. It costs \$1,300 a year to supervise them on community corrections. Keep those numbers in mind when you're thinking bang for the buck.

Persons Testifying: (In support) Tom McBride, Washington Association of Prosecuting Attorneys; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Matt Zurich and Ginger Richardson, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.