

# SENATE BILL REPORT

## SHB 2417

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As Passed Senate, March 4, 2020

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

**Brief Description:** Concerning individuals serving community custody terms.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Davis and Peterson).

**Brief History:** Passed House: 2/13/20, 95-2.

**Committee Activity:** Human Services, Reentry & Rehabilitation: 2/25/20 [DP].

**Floor Activity:**

Passed Senate: 3/04/20, 26-21.

### Brief Summary of First Substitute Bill

- Allows sanctions for low-level violations to be non-confinement sanctions or not more than three days in custody.
- Allows a person's sixth or subsequent low level violation to be considered high level, subject to the Department of Corrections (DOC) policies and rules.
- Requires persons with underlying 21 offenses who commit new crimes to be released if the prosecuting attorney notifies DOC that new criminal charges will not be filed.
- Requires DOC to track and collect certain data on community custody violations and sanctions and submit an annual report to the Governor and Legislature.
- Requires DOC to contract with an independent third party to review and update the community corrections staffing model.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** Do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

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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.*

**Staff:** Kelsey-anne Fung (786-7479)

**Background:** Swift and Certain. According to DOC, the Legislature adopted the swift and certain (SAC) sanctioning model into law in 2012 in response to the continued economic downturn and the need to strategically cut costs without jeopardizing public safety. At the time, there was emerging research that SAC sanctioning programs increased compliance in the community and reduced costs associated with confining community violators. DOC was required to adopt rules creating a structured violation process with presumptive sanctions, aggravating and mitigating factors, and definitions for low level and high level violations.

Under SAC, an individual's first low level violation may be addressed with a stipulated agreement. Subsequent low level violations, up to five, may be addressed through a short term confinement sanction of one to three days in custody. For sixth and subsequent low level violations, any low level violations with aggravating factors, and high level violations, DOC may impose up to 30 days of confinement, subject to a hearing process.

Underlying 21 Designation. Generally, an offender who commits a new crime is held in confinement for not more than three days. If the offender's underlying offense is one of the underlying 21 designation, or U21, and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires, for up to 30 days, or until a prosecuting attorney files new charges against the offender, whichever occurs first. The following felonies fall under the U21 designation:

- assault in the first degree;
- assault of a child in the first degree;
- assault of a child in the second degree;
- burglary in the first degree;
- child molestation in the first degree;
- commercial sexual abuse of a minor;
- 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 degree;
- murder in the second degree;
- promoting commercial sexual abuse of a minor;
- rape in the first degree;
- rape in the second degree;
- rape of a child in the first degree;
- rape of a child in the second degree;
- robbery in the first degree;
- sexual exploitation of a minor; and
- vehicular homicide while under the influence of intoxicating liquor or any drug.

The Department of Corrections' Proposal. In 2019, DOC proposed changes to SAC and U21 designation cases to the Sentencing Guidelines Commission and the Washington Criminal Sentencing Task Force. According to DOC, an individual's sixth low level violation must be

considered high-level, regardless of the seriousness of the violation, the impact jail confinement will have on the individual's stability in the community, or the likelihood the sanction will prevent future violation behavior. The additional requirements for sanctioning individuals on supervision for one of the U21 offenses who commit constitute new crimes increase complexity for staff and require sanctions that are not based on the violation behavior.

**Summary of First Substitute Bill:** DOC may sanction an offender who commits a low level violation with one or more nonconfinement sanctions, or not more than three days in total confinement. A person's sixth or subsequent low level violation may be considered a high level violation, provided that any decision to elevate a violation complies with DOC's policies and rules. For persons with underlying 21 cases who commit new offenses while on community custody, such persons will be released if the prosecuting attorney notifies DOC that new criminal charges will not be filed. The changes to the law apply retroactively and prospectively regardless of the date of the offender's underlying crime.

DOC must track and collect certain data and information on community custody violations and imposed sanctions, including the number and types of high level and low level violations, types of sanctions imposed, term lengths for confinement sanctions, and trends in rates of violations and confinement. DOC must submit an annual report to the Governor and Legislature beginning November 1, 2021.

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

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This is a common sense approach to helping people transition to public life while keeping the public safe. The bill allows DOC to ensure the response to community custody violations is based on the behavior and not the number count. SAC does not take into consideration the needs or risk responsivity of the individual on community custody, or the person's history of success, role in treatment, employment, or housing stability. Under this bill, a person whose fifth violation is failing to update their home address can be sanctioned with nonconfinement options rather than up to 30 days in confinement. Persons with mental health or substance abuse need longer term interventions that are not just return to jail. Further confinement compounds the underlying drug or behavioral issues so that the result is a large violator population in jail who are not receiving help or services.

CON: At the time when SAC was adopted, there was convincing evidence that addressing a person's fifth and subsequent low level violation as high level was effective. This was based on outcomes from the study in Hawaii. However, DOC data shows that the top five offenses in the low level category are not things one would normally consider minor and are significant violations. This opens the door to allowing the implicit bias of DOC staff to impact sanction decisions. If a person feels they have been treated unfairly as a result, the person will act out and put the DOC community corrections officer at risk of injury. This will make communities less safe. Further, any savings should be captured and statutorily directed into a dedicated account to fund other reentry services or reduce caseload.

**Persons Testifying:** PRO: Representative Lauren Davis, Prime Sponsor; Vicki Christophersen, Justice Action Network; Mac Pevey, DOC, Assistant Secretary; Lillian Wilbur, DOC, Community Corrections Officer.

CON: James McMahan, Washington Association of Sheriffs & Police Chiefs; Jim Furchert, Community Corrections Officer 3.

**Persons Signed In To Testify But Not Testifying:** No one.