

SENATE BILL REPORT

ESHB 2303

As of February 19, 2024

Title: An act relating to modification of conditions of community custody.

Brief Description: Modifying conditions of community custody.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons and Peterson).

Brief History: Passed House: 2/13/24, 58-39.

Committee Activity: Human Services: 2/19/24.

Brief Summary of Bill

- Provides that the Indeterminate Sentence Review Board may modify or impose additional community custody conditions based on the person's crime of conviction, risk of reoffense, or risk to community safety.
- Authorizes the court, upon motion of a person on community custody, to amend substantive conditions of community custody imposed by the court if there has been a substantial change in circumstances such that the condition is no longer necessary for community safety.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Kelsey-anne Fung (786-7479)

Background: Indeterminate Sentence Review Board. The Legislature passed the Sentencing Reform Act (SRA) in 1981 which established determinate sentencing. There are some exceptions to determinate sentencing where certain incarcerated individuals are eligible for review after serving a certain number of years. The Indeterminate Sentence Review Board (ISRB), which is a quasi-judicial board located within the Department of Corrections (DOC), has the authority to review and release incarcerated individuals if the

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

statutory criteria is met for the following three populations:

- Parole Cases—persons who committed crimes prior to the SRA, July 1, 1984;
- Community Custody Board—persons who committed certain sex offenses after August 31, 2001, and who have determinate-plus sentences; and
- Juvenile Board Cases—persons who committed crimes under age 18 and were sentenced for terms longer than 20 years.

For these cases, if the decision is to release the individual to the community with conditions, they are subject to supervision by DOC. DOC reports any violations of conditions to ISRB and the person's release may be revoked.

Community Custody. Community custody is the portion of a person's criminal sentence served in the community under DOC supervision following release from confinement in a state correctional facility. There are certain crimes for which community custody must be imposed by the courts. While on community custody, individuals are subject to conditions imposed by DOC, the sentencing court, and ISRB in certain circumstances. The Secretary of DOC may issue a warrant for the arrest of any person who violates a condition of community custody. Sanctions vary depending on the type of violation, the underlying offense, and other conditions.

Department of Corrections Conditions. DOC must assess the person's risk of reoffense and may establish and modify conditions of community custody based on risk to community safety. DOC may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. After receiving written notice of a condition imposed or modified by DOC, the person has until the close of the next business day to request an administrative review. The condition must remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the person's risk of reoffending, or the safety of the community.

Indeterminate Sentence Review Board Conditions. When a person on community custody is under the authority of ISRB, DOC must assess the person's risk of recidivism and recommend any additional or modified conditions to ISRB based on the person's risk to community safety. ISRB may impose conditions in addition to court-ordered conditions. After receiving notice of a condition imposed by ISRB or DOC, the person has until the close of the next business day to request an administrative review. The condition must remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- the crime of conviction;
- the person's risk of reoffending;
- the safety of the community;
- the person's risk of domestic violence reoffense.

DOC may impose additional conditions if DOC finds an emergency exists, but DOC may not impose conditions that are contrary to those set by ISRB or the court and may not

contravene or decrease court-imposed or ISRB-imposed conditions.

Recent Court Decisions. In *In re Personal Restraint of Ansell*, the Washington Supreme Court held in 2023 that ISRB may impose community custody conditions that relate to the crime of conviction, the risk of reoffense, and the safety of the community. A condition that fails to relate to all three is invalid.

In *State v. Hubbard*, the Washington Supreme Court held in 2023 that trial courts do not have authority to modify a court-imposed discretionary community custody condition for an individual who is no longer serving a Special Sex Offender Sentencing Alternative.

Summary of Bill: Conditions Imposed or Modified by the Indeterminate Sentence Review Board. ISRB may impose or modify a person's community custody conditions in addition to court-ordered conditions. Regardless of the person's date of sentencing, additional conditions imposed or modified by ISRB may be based upon the person's crime of conviction, risk of reoffense, or risk to community safety. The additional conditions of community custody need not be crime-related if the conditions reasonably relate to either the risk of reoffense or risk to community safety.

The ISRB may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. ISRB must notify the person in writing of any additional or modified conditions.

A person may request an administrative review within 10 business days of receiving notice of a condition imposed or modified by ISRB or DOC. The condition must remain in effect if the hearing examiner finds that it is reasonably related to at least one of the following:

- crime of conviction;
- the person's risk of reoffending;
- the safety of the community; or
- the person's risk of domestic violence reoffense.

Motion to Modify Court-Imposed Conditions of Community Custody. On the motion of a person on community custody, following the person's release from total confinement, the court may amend the substantive conditions of community custody imposed by the court. The person has the burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that the condition is no longer necessary for community safety. In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on the fact that time has passed without a violation.

Motions to modify community custody conditions are limited to once every 12 months. The time limit for collateral attacks does not apply to these motions. Motions to modify community custody conditions may not reopen the person's conviction to challenges that would otherwise be barred by statute or other procedural barriers.

Other. This act applies to all persons sentenced to a term of community custody before, on, or after the effective date.

There is a severability clause in the bill.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: There were two Washington Supreme Court cases in the last year that necessitate passing this bill. In the *Ansell* case, the court held that ISRB can only modify a community custody condition based on crime of conviction, risk of reoffense, and community safety, when it should be allowed to modify a condition related to only one of the topics. This restores the law to give ISRB flexibility to modify community custody conditions when situations and circumstances change. In the second case, *Hubbard*, the court held that courts cannot modify community custody conditions. This bill allows a person to ask the court to modify community custody conditions once every 12-month period based on a substantial change in circumstances, and the mere passage of time is not enough. The courts and ISRB are frozen right now and this bill will restore their authority to modify community custody conditions and restore public safety.

This clarifies ISRB's authority to impose community custody conditions, consistent with the Legislature's original intent. This bill has been extensively worked with stakeholders. ISRB has been releasing individuals since 2001 and imposing conditions meeting at least one of the three criteria, but not all three. The Washington Supreme Court said that conditions of supervision must be related to all three, and the condition is invalid if it does not. There are 1700 people on community custody. Many are under supervision for life, and their risk is dynamic so it is important for ISRB to be able to address issues when they come up.

CON: There is concern that this bill violates the federal and state constitutional protections against ex post facto. There is nothing ISRB can do to change the impact of the holding of *Ansell* on individuals who committed crimes prior to 2009. No ruling has been made on the conjunctive or disjunctive nature of the list of topics in statute. If the bill is not passed, ISRB would continue to be authorized under current law to impose community custody conditions. ISRB, courts, and DOC are not authorized to impose prohibitions that are not crime-related and never have been. The bill does not fix this issue but adds more complexity and invites the court to rule on public policy that does not have sound language or design.

The voices of individuals currently incarcerated were not part of the stakeholder process.

The court in *Ansell* revealed that ISRB has been violating the existing statute for years. There should not be a rush to give ISRB unfettered discretion to impose community custody conditions with no tether to the person's criminal conduct, in violation of the constitution. Public safety and risk of reoffense are interrelated to the crime of conviction, so conditions must be related to all three.

OTHER: There is concern the bill violates ex post facto guarantees in the state constitution by applying the changes retroactively regardless of the date of sentencing. This bill changes the law and imposes a new restriction for past conduct. The Legislature can pass new laws but cannot change a prohibition for someone who already committed a crime.

There is support for changes in the bill that respond to *Hubbard* and the extension of time to respond to new ISRB conditions. While some outstanding issues remain, overall on the whole, there is support for where the bill is at.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Kecia Rongen, Indeterminate Sentence Review Board; Jeff Patnode, Indeterminate Sentence Review Board.

CON: Peter Ansell; Michelle Conley.

OTHER: Jeffrey Ellis, Redemption Project of WA; Sonja Hardenbrook, WDA/WACDL.

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