

HOUSE BILL REPORT

HB 1192

As Reported by House Committee On:
Community Safety

Title: An act relating to disciplinary hearings held by the department of corrections for individuals in partial and total confinement or serving a term of community custody.

Brief Description: Concerning disciplinary hearings held by the department of corrections.

Sponsors: Representatives Simmons, Peterson, Obras, Ormsby and Hill.

Brief History:

Committee Activity:

Community Safety: 1/14/25, 1/23/25 [DPS].

Brief Summary of Substitute Bill

- Establishes preponderance of the evidence as the standard of proof for the Department of Corrections disciplinary hearings for alleged violations of the disciplinary rules of total confinement and partial confinement, and alleged violations of community custody conditions.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Simmons, Vice Chair; Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett, Davis, Fosse and Obras.

Staff: Lena Langer (786-7192).

Background:

Community Custody.

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.

Community custody is the portion of a person's criminal sentence served in the community under the Department of Corrections' (DOC) supervision following their 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 the DOC, the sentencing court, and the Indeterminate Sentence Review Board, in certain circumstances. The Secretary of the 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. There are nonconfinement and confinement sanctions. Under DOC rule, the standard of proof for a disciplinary hearing for an alleged violation of community custody conditions is preponderance of the evidence.

Total Confinement.

Total confinement is confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for 24 hours a day. The DOC's written rules of conduct for incarcerated individuals specifies prohibited acts and penalties that will be imposed for various degrees of violation. Sanctions include loss of privileges, loss of good conduct time credits, and loss of earned time credits. Per the DOC Statewide Orientation Handbook, the standard of proof for a disciplinary hearing of an alleged violation in total confinement is some evidence.

Partial Confinement.

For certain persons, a term of total confinement may be converted to partial confinement. Partial confinement is confinement up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement may include work release, home detention, work crew, or electronic monitoring.

Home detention is a program of partial confinement in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring.

Work release is a program of partial confinement available to persons who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, a person may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the DOC. If the rules of the partial confinement program are violated, the person may be required to serve the remainder of the term in total confinement. Under DOC rule, the standard for a disciplinary hearing for an alleged violation in partial confinement is preponderance of the evidence.

Summary of Substitute Bill:

The standard of proof for DOC disciplinary hearings for alleged violations of total and partial confinement disciplinary rules and community custody conditions is preponderance of the evidence.

The DOC must adopt rules to implement the new standards. The DOC must ensure that the incentive system for an incarcerated person's behavior and participation in education and work programs conforms to the new standards.

Substitute Bill Compared to Original Bill:

Preponderance of the evidence, rather than beyond a reasonable doubt, is the standard of proof for DOC disciplinary hearings for alleged violations of community custody conditions and partial confinement disciplinary rules or conditions.

Appropriation: None.

Fiscal Note: Requested on January 9, 2025.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) There should be a fair process for people in prison when there are alleged violations of disciplinary rules. Incarcerated people should not face consequences for something they have not done. Most of these disciplinary hearings occur without representation for the individual. There is support to raise the standard from some evidence to preponderance of the evidence for individuals in total confinement. There is support for making the standard at DOC disciplinary hearings beyond a reasonable doubt because there are horror stories about how these hearings go, the outcomes for the individuals, and how long it takes to fix these outcomes. A possible outcome of a disciplinary hearing is that someone will serve a longer sentence in confinement. For that reason, the standard should be beyond a reasonable doubt. There should be a discussion of requiring clear and convincing evidence, because that is a standard that is higher than preponderance of the evidence, but lower than beyond a reasonable doubt.

(Opposed) There was concern about making the standard for some hearings beyond a reasonable doubt, but that concern was resolved by the bill sponsor's comments.

(Other) The DOC works to protect individuals' due process rights. Preponderance of the evidence is the current standard for disciplinary hearings for violations in partial confinement. The status quo for community custody hearings is the preponderance of evidence standard, but this is in rule and not in statute. Preponderance of the evidence is in line with the courts and the courts' review of community custody violations.

Persons Testifying: (In support) Representative Tarra Simmons, prime sponsor; Jacob Schmitt; Jacob Schmitt, Just Us Solutions; Izzy Eads; Cindy Arends Elsberry, Washington Defender Association; Percy Levy; and Izzy Eads.

(Opposed) Russell Brown, WA Association of Prosecuting Attorneys.

(Other) Mac Pevey, Department of Corrections; and Kati Durkin, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.