

HOUSE BILL REPORT

HB 1668

As Reported by House Committee On:
Community Safety

Title: An act relating to community custody.

Brief Description: Concerning community custody.

Sponsors: Representatives Davis, Griffey, Richards and Nance.

Brief History:

Committee Activity:

Community Safety: 2/13/25, 2/17/25, 2/20/25 [DPS].

Brief Summary of Substitute Bill

- Removes specified offender scoring for the felony offense of Escape from Community Custody.
- Requires treatment providers to update community corrections officers on a supervised individual's compliance with treatment imposed as a condition of the individual's criminal sentence.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett, Davis, Farivar, Fosse and Obras.

Staff: Michelle Rusk (786-7153).

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 supervision of the Department of Corrections (DOC) following the person's release from confinement in a state correctional facility. While on community custody, a person is subject to conditions imposed by the court and the DOC. The DOC may issue warrants for the arrest of any person who violates a condition of community custody. A person may also be subject to sanctions if they violate conditions, including time in total confinement.

Escape from Community Custody. A person in community custody who willfully discontinues making themselves available to the DOC for supervision by making their whereabouts unknown, or failing to maintain contact with the DOC as required by the community corrections officer, is deemed an escapee and fugitive from justice, and is guilty of a class C, seriousness level II felony.

Offender Score. Washington's sentencing laws provide a determinate sentencing system in which courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on the person's prior convictions. If someone's present conviction is for Escape from Community Custody, courts must only count adult prior escape convictions in the offender score.

Treatment. Individuals receiving court-ordered or DOC-ordered mental health, chemical dependency, or domestic violence treatment must disclose to the provider whether they are supervised by the DOC.

Summary of Substitute Bill:

Community Custody.

The specified offender scoring when someone's present conviction is for Escape from Community Custody is removed.

When mental health or substance use disorder treatment is a condition of a supervised person's sentence or a condition imposed by the Department of Corrections, applicable behavioral health service providers must give updates about the supervised person's compliance with their treatment plan to the supervised person's community corrections officer.

Substitute Bill Compared to Original Bill:

The substitute bill:

- removes guidance to the Department of Corrections (DOC) to exercise discretion when deciding to recommend to a prosecuting authority the charging of the felony

- offense of Escape from Community Custody;
 - removes the requirement that within five days of the DOC issuing a warrant for someone who has absconded from community custody, community corrections officers (CCOs) must undertake all reasonable efforts to ascertain the whereabouts of and apprehend the individual, and removes the requirement that liaison positions are created to assist CCOs and law enforcement with coordinating to locate these individuals;
 - removes the ability to sanction a supervised person to greater than 30 days in total confinement for a high-level violation when the individual poses a substantial risk to public safety or has absconded for a prolonged period of time or under concerning circumstances;
 - removes the requirement that the DOC develop and implement a polygraph tracking system;
 - removes the seriousness level increase to V for the felony offense of Escape from Community Custody; and
 - removes the requirement that the DOC ensure electronic monitoring includes specified capabilities.
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Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2025.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) This legislation recognizes that most crime is not random. Folks under supervision are those who have committed a violent offense or sex offense. In 2024 there were over 11,000 high-level violations committed by supervised individuals. High-level violations include possession or use of a deadly weapon, contact with a prohibited person or location, prohibited contact with minors, and failure to submit to a search or polygraph. If we want to reduce violent crime, we have to start here. Even with these violations, the most time in total confinement the Department of Corrections (DOC) may impose is 15 days, regardless of how long someone has absconded or violated conditions. The number one barrier community corrections officers (CCOs) encounter in their work is the 15-day maximum jail sentence for high-level sanctions. This maximum penalty is not sufficient for addressing repetitive, unhealthy, and dangerous behaviors. Confinement is sometimes the only time the DOC can engage with someone.

CCOs work very hard to make sure supervised individuals succeed upon reentry, including getting individuals enrolled in substance use or mental health treatment and opportunities with second chance employers. There are a lot of nuances to this work and it requires

navigating some of the most difficult situations people in our communities face. CCOs would much rather see folks in treatment over incarceration. However, there is support for this bill because it is a vital tool for when there is no other option to keeping individuals and our communities safe. Incarceration can, depending on a situation, assist with someone's rehabilitation. A short sanction is equivalent to no consequences. There are individuals who simply will not respond to community custody conditions unless they absolutely have to. Electronic monitoring is also not monitored in real time, requiring CCOs to proactively look in their systems during work hours for violations, and given their large work loads this is not always realistic. They are struggling to adequately monitor supervised individuals with alcohol issues, and do not have access to important technologies that are available to do this.

Escape from Community Custody is also essentially crime without a penalty. As a seriousness level II offense it is similar to Commercial Fishing Without a License, and for purposes of sentencing, only prior convictions for escape are counted toward a sentenced person's criminal history. Only counting a person's prior escape offenses does not create accountability for people violating their community custody. The DOC thinks some of the elements of the bill may be better addressed through DOC policies, but the DOC needs resources to support these efforts, including the five-day warrant check and filing of Escape from Community Custody charges.

(Opposed) The proposed modified penalty for Escape from Community Custody creates an unwarranted disparity in punishment. The Sentencing Reform Act is intended to ensure that punishment is proportionate to the seriousness of an offense and commensurate with other similar punishments. In this instance, the bill adjusts the seriousness level of Escape from Community Custody up to a level V, which jumps over the seriousness levels for Escape 2 and Escape 1. Escape from Community Custody happens when someone is not reporting out in the community, and these concerns are not as serious as Escape 1 and Escape 2, so ranking Escape from Community Custody higher is problematic and disproportionate. Relatedly, the portion of the bill that changes how Escape from Community Custody is scored will already result in people having more confinement time assessed because essentially no one being sentenced for this offense will have a zero offender score, since they are on community custody for prior offenses committed.

Another part that is concerning is where the DOC is encouraged to exercise discretion in recommending the charging of Escape from Community Custody to prosecutors. Use of discretion is good, but are officers going to use this discretion? The Washington State Supreme Court has said that the state can be held negligent in its supervision duties without guidance on what constitutes "prolonged" and "substantial risk."

Persons Testifying: (In support) Representative Lauren Davis, prime sponsor; James McMahan, WA Assoc Sheriffs and Police Chiefs; Mac Pevey, Department of Corrections; Jim Furchert, WFSE Member; Doug Chaput, WFSE Member; and Scott Lee, WFSE Member.

(Opposed) Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Keri-Anne Jetzer, WA State Sentencing Guidelines Commission.

Persons Signed In To Testify But Not Testifying: Nicholas Day.