

HOUSE BILL REPORT

HB 1578

As Reported By House Committee On:
Corrections

Title: An act relating to the clarification of responsibility to monitor criminally insane offenders, track sentences, clarify tolling provisions, and charge offenders for special services.

Brief Description: Revising provisions relating to offenders under the jurisdiction of the department of corrections.

Sponsors: Representatives L. Johnson, Morris, G. Cole, Padden, Riley, Edmondson, Mastin, Johanson, Jones, Basich, King, Valle, Campbell, Long, Shin, Springer, Karahalios, Roland, Rayburn, Conway, Kremen, Ogden, Cothorn and H. Myers; by request of Department of Corrections.

Brief History:

Reported by House Committee on:
Corrections, March 1, 1993, DPS.

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Morris, Chair; Mastin, Vice Chair; Long, Ranking Minority Member; Edmondson, Assistant Ranking Minority Member; G. Cole; L. Johnson; Ogden; Riley; and Padden.

Staff: Jim Lux (786-7841).

Background: The Department of Corrections is required to track felony cases following conviction and felony cases pursuant to interstate compact agreements. Tracking begins at the time the department receives a disposition from the prosecuting attorney. Information collected shall include felons' criminal records from the time of conviction through the completion of sentence.

When an offender is absent from a community sanction without permission, the court must establish the date for tolling the sentence. The tolling date is based on reports provided to the court by the Department of Corrections.

Offenders with sentences that include community supervision, community service, community placement, or legal financial obligations must pay a supervision fee.

Individuals who are legally determined to be criminally insane may be conditionally released by the court to the Department of Corrections. Until a conditional release is granted, the individual is under the jurisdiction of the Department of Social and Health Services. If regular or periodic medication or other medical treatment is a condition of release, the court shall require the individual to report to a physician or other person for medication or treatment. In addition to other required reports, the physician or other person shall immediately, upon the released person's failure to appear for medication or treatment, report the failure to the court and to the prosecuting attorney of the county in which the released person was committed.

A physician treating a conditionally released person must regularly or periodically submit reports to the court, the secretary of the institution from which the individual is released, and the prosecuting attorney of the county in which the person was committed stating the person is adhering to the terms and conditions of the release.

When a conditionally released person is required to report to a physician, probation officer or other individual on a regular or periodic basis, the physician, probation officer, or other such person shall monthly, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county from which the person was committed, a report stating whether the person is adhering to the terms and conditions of the conditional release.

In the event of a disappearance by the person on conditional release the superintendent shall notify, as appropriate, local law enforcement, other governmental agencies, the person's relatives and other appropriate individuals of the disappearance.

Each person conditionally released by the court shall have their case reviewed by that court no later than one year after such release and no later than every two years thereafter. Reviews may occur in a shorter time or more frequently, if the court in its discretion on its own motion or on motion of the released person, the secretary or the prosecuting attorney, so determines. The sole purpose of the review is to determine whether the individual shall continue to be conditionally released.

If the prosecuting attorney, the secretary, or the court believe that the conditionally released person is failing to adhere to the terms and conditions of the conditional release, the court or the secretary may order the person apprehended and taken into custody until such time as a hearing can be scheduled to determine whether the conditional release should be revoked or modified. Either the prosecutor or the conditionally released person have the right to ask for an immediate mental examination of the conditionally released person. If the conditionally released individual is indigent, the court or secretary shall, upon request, assist the person in obtaining a qualified person to conduct a mental examination.

The secretary, upon application by the conditionally released person, shall determine whether or not reasonable grounds exist for a final discharge.

All records and reports concerning criminally insane individuals shall only be released upon request to the following: the committed person, his or her attorney, his or her personal physician, the prosecuting attorney, the court, the protection and advocacy agency, or other expert or professional person who, upon proper showing, demonstrates a need for access to such records. These records and reports shall also be made available to the Department of Corrections and the Indeterminate Sentence Review Board if the person was on parole or probation at the time of detention, hospitalization, or commitment, or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter dealing with the criminally insane.

Gender references are primarily male.

Summary of Substitute Bill: The requirement for the Department of Corrections to track convicted felons is clarified to include only those felons under its jurisdiction -- convicted felons sentenced for longer than one year.

When an offender is absent from a community sanction without permission, the Department of Corrections shall establish the date for tolling the sentence, due to the absence. By adding the responsibility for tolling absences from a community sanction, the department will have responsibility for keeping track of absences from both confinement and community sanctions. This removes a workload burden on the courts, streamlines the tolling process and ensures that offenders serve the full term of supervision ordered by the court.

Additional community sanctions are now being used such as electronic monitoring, telephonic reporting and day reporting that are not specifically identified in this section of statute. Offenders with the ability to pay for these special services are assessed a fee. Indigent offenders would not participate in the cost of service.

Until 1981, corrections was a program under the umbrella of the Department of Social and Health Services; the criminally insane statute contains references to that effect. The sections of statute covering criminally insane persons on conditional release are clarified to reflect a separate Department of Corrections and reporting requirements involving the released person are modified.

When a person is conditionally released by the court and the person is required to report to a community corrections officer, the release order shall specify that the conditionally released person is under the supervision of the Department of Corrections. While under the supervision of the department, the conditionally released person shall follow the instructions of the department which includes: reporting to the community corrections officer, remaining in prescribed geographical boundaries, and reporting any changes in address or employment.

If the court determines that regular or periodic medication or treatment is a condition of the person's release then the court shall require the person to report to the treating professional. If the person fails to appear for medication and treatment, the treating professional shall immediately notify the court and the prosecuting attorney in the county of commitment. In addition, the supervising community corrections officer is also to be notified

The reporting requirements of the individuals who are involved with the conditionally released person are modified. Unless the court determines otherwise, the physician, community corrections officer, medical or mental health practitioner, or any other person shall report monthly for the first six months and semiannually thereafter, to the court, the secretary of the institution from which released, and the prosecuting attorney, as to whether the released person is adhering to the terms and conditions of the conditional release.

Responsibility is clarified in the event of escape by a committed person from the institution or the disappearance of the person on conditional release. Either the Department of Social and Health Services or the Department of Corrections shall as appropriate notify law enforcement, other governmental agencies or other individuals as

necessary, to preserve public safety or assist with the apprehension of the committed or conditionally released person.

After the first year on conditional release the persons case shall be reviewed and reviewed every other year thereafter. In addition to the court, the prosecuting attorney or the conditionally released person, the secretary of the Department of Social and Health Services, the secretary of the Department of Corrections and the medical or mental health practitioners can make a motion to the court to review the case in a shorter period of time or more frequently.

Clarification is made with respect to who can revoke a person's conditional release. In addition to the court, the prosecuting attorney, the secretary of the Department of Social and Health Services, and the secretary of the Department of Corrections may also order that the conditionally released person be apprehended and taken into custody for failure to adhere to the conditions of release.

Upon the person's application requesting discharge from the institution or conditional release, the secretary of the Department of Social and Health Services may consider reports and evaluations from professionals familiar with the case as well as reports filed pursuant to statute.

If the secretary approves the final discharge, the person is then authorized to petition the court and prosecuting attorney. A hearing shall be scheduled within 45 days unless good cause is shown. The petitioner or prosecuting attorney may demand a jury. The burden of proof is on the petitioner to show by a preponderance of the evidence that the petitioner no longer presents, as a result of a mental disease or defect, a substantial danger to others or a likelihood of committing other felonies. Meeting this burden is intended to avoid violating the due process clause that precludes someone being held based on future dangerousness.

The community corrections officer is added to the list of people who may have access to the committed individuals records and reports.

Substitute Bill Compared to Original Bill: A technical inconsistency is corrected concerning the tolling of confinement sentences and community supervision sentences for offenders who are absent without permission. The section dealing with the discharge of criminally insane individuals did not contain language prohibiting individuals from being held based on the potential for future dangerousness.

Fiscal Note: Not requested.

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

Testimony For: Language clarifies the responsibilities for tracking felons under the jurisdiction of the Department of Corrections. Responsibility for tolling sentences when offenders abscond while serving community sanctions is transferred from the courts to the department. This removes a workload burden from the Superior Court that can be better and more accurately handled by the department. Language updating and clarifying responsibilities in the criminally insane statute is provided consistent with the separation of the Department of Corrections from the Department of Social and Health Services.

Testimony Against: None.

Witnesses: (Pro): Mike Gray, Department of Corrections; and Alex Barkus, Washington Association of Prosecuting Attorneys.