

HOUSE BILL REPORT

E2SSB 5421

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to the supervision of offenders in the community.

Brief Description: Enhancing supervision of offenders.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/30/99, 4/2/99 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by House Committee)

- Expands the list of offenses for which a mandatory term of community custody is required, and requires the Sentencing Guidelines Commission to establish community custody ranges for these offenses.
- Authorizes the courts to impose affirmative conditions on offenders being sentenced to a term of community custody, and authorizes the Department of Corrections to modify these conditions or impose additional conditions under certain circumstances.
- Authorizes the Department of Corrections to sanction violations of community custody administratively, and specifies the procedures to be followed.
- Converts the two-year community supervision term that may be ordered by the court for offenders sentenced under the first-time offender waiver to a one-year term of community custody, or up to the period of treatment ordered, but not to exceed two years.
- Authorizes the Department of Corrections to arrange for the collection of unpaid legal financial obligations through the county clerk, or through another entity if the clerk does not assume this responsibility.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Jean Ann Quinn (786-7310).

Background:

Purposes of the Sentencing Reform Act: The stated purposes of the Sentencing Reform Act (SRA) are to ensure that the punishment for an offense is proportionate to the seriousness of the offense and the offender's prior history, promote respect for the law, be commensurate with the punishment imposed on others with similar offenses, protect the public, give the offender the opportunity to improve him or herself, and make frugal use of the state's resources.

Sentencing Guidelines Commission: The Sentencing Guidelines Commission is a state agency statutorily required to evaluate and monitor adult and juvenile sentencing policies and practices and make recommendations to the Governor and the Legislature.

Sentencing Hearings: The court is required to hold a sentencing hearing before imposing a sentence on a defendant. The court must consider pre-sentence reports, if any, and must allow arguments from the prosecutor, defense counsel, offender, victim, survivor of the victim, and an investigative law enforcement officer as to the sentence to be imposed. Copies of all pre-sentence reports presented to the court are sent to the Department of Corrections at the conclusion of sentencing and accompany the offender if he or she is committed to the custody of the department.

Community Custody, Community Placement, & Post-Release Supervision:

In General: The terms community placement, community custody, and post-release supervision essentially all refer to supervision following release from the Department of Corrections. The terms were devised in part to indicate when the department could sanction an offender for violating conditions of release administratively (community custody), and when the department had to return to court to ask the court to impose sanctions (post-release supervision).

Community custody is that portion of an inmate's sentence of confinement served « in lieu of earned early release time, or imposed by the court under the special drug offender sentencing alternative, the special sex offender sentencing alternative, or for sex offenses committed after a certain date « in the community subject to controls placed on the inmate's movement and activities by the Department of Corrections.

Post-release supervision begins upon completion of the term of confinement, and is that portion of community placement which is not community custody.

Community placement is that period during which an offender is subject to the conditions of community custody and/or post-release supervision. It may consist entirely of community custody, entirely post-release supervision, or a combination of the two.

Terms and Conditions: Certain crimes, specifically sex offenses, serious violent offenses, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined that the defendant or an accomplice was armed with a deadly weapon, and certain drug offenses, currently carry a term of community placement or community custody. Depending on the crime, and when it is committed, the term is for a period of one, two, or three years. Unless waived by the court, certain mandatory conditions are required to be included in the term of community placement or community custody. Special conditions, such as crime-related prohibitions, may also be included.

All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation are under the supervision of the Department of Corrections and must follow the instructions and conditions of the department. The instructions must include reporting as directed to a community corrections officer, remaining within certain geographical boundaries, notifying the officer of any change in address or employment, and paying a supervision fee. For offenders sentenced to terms involving community custody, the department may also include any appropriate conditions of supervision, including prohibiting the offender from having contact with specified individuals.

Violations: If an offender violates a condition of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any time actually spent in community custody. Other sanctions are authorized for sex offenders who violate a condition of community custody. An offender accused of violating a condition of community custody is entitled to a hearing before the department before sanctions are imposed. The hearing is considered a disciplinary hearing and is not subject to the requirements of the Administrative Procedure Act.

An offender who violates a condition of community placement can be arrested and placed in total confinement pending a determination by the court.

Inmates who have been transferred to community custody and are detained in a local correctional facility are generally the financial responsibility of the department. However, the local correctional facility is financially responsible for portions of confinement sanctions received by certain sex offenders who have committed community custody violations.

Community Supervision:

In General: On all sentences of confinement of one year or less, the court may impose up to one year of community supervision which is a period of time during which the convicted offender is subject to crime-related prohibitions and other conditions imposed by the court. "Crime-related prohibition" does not include requiring an offender to affirmatively participate in rehabilitation or otherwise perform affirmative conduct. Community supervision is the functional equivalent of probation in other states.

First-Time Offender Waiver: For a first-time offender, the court can waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to 90 days confinement in a county jail and a requirement that the offender refrain from committing new offenses. The sentence can also include up to two years of community supervision which, in addition to crime-related prohibitions, may include requirements that the offender perform specific actions, such as devoting time to a specific occupation or course of study, undergoing treatment, and reporting as directed to the court and a community corrections officer.

Unranked Felonies: If the crime for which the defendant is being sentenced is "unranked" « meaning that a sentence range has not been established for the crime « the court must impose a determinative sentence that can include up to one year of community supervision, along with other penalties, including a term of confinement of up to one year.

Categorization of Crimes for Prosecuting Standards: For prosecuting standards purposes, crimes are categorized as "crimes against persons," "crimes against property/other crimes," and "unclassified."

Tolling: A term of confinement « including community custody « is tolled during any time in which the offender has absented himself or herself from confinement without approval. A term of supervision is tolled during any time in which the offender has absented himself or herself from supervision without approval. A term of supervision is also tolled during any time an offender is in confinement, unless the offender is detained in confinement for violating a condition of supervision and the offender is later found not to have violated the condition.

Legal Financial Obligations: The Department of Corrections is responsible for monitoring and enforcing offenders' sentences with regard to legal financial obligations.

Summary of Amended Bill:

Purpose of the Sentencing Reform Act: Reducing the risk of reoffending by offenders in the community and making frugal use of local government resources are added to the list of the purposes of the SRA.

Sentencing Guidelines Commission: By December 31, 1999, the Sentencing Guidelines Commission is required to establish community custody ranges to be included in sentences for sex offenses, violent offenses, crimes against persons, and certain drug offenses not sentenced under the special drug offender sentencing alternative, and the commission can propose modifications to these ranges each year. The ranges are to be based on the principles of the SRA and must take into account the funds available to the department for community custody. The Legislature can adopt or modify the ranges proposed by the commission, but if the Legislature does not act in the next regular session after the ranges are proposed, they take effect without legislative approval.

Sentencing Hearings: Except in cases involving a sentence of life without the possibility of release or death, the court may order the Department of Corrections to complete a risk assessment report. If ordered and available before sentencing, the court must consider the report when imposing the sentence. Results of a risk assessment cannot be based on unconfirmed or unconfirmable allegations. Copies of the risk assessment report are sent to the Department of Corrections and accompany the offender if he or she is committed to the custody of the department.

Community Custody:

In General: A new subsection of the SRA is created that requires, beginning with crimes committed after July 1, 2000, a mandatory term of community custody for persons convicted of a sex offense, a violent offense, any crime against a person, and certain drug offenses. With respect to those violent offenses and crimes against persons, committed on or after the effective date of the act, but before July 1, 2000, for which a longer term of community placement is not already required, the court is required to include a one-year term of community placement as part of the sentence.

The department must develop and monitor transition and relapse prevention strategies to reduce the risk to the community following a sex offender's term of confinement in the custody of the department.

Terms: The term of community custody is to be the community custody range for the crime established by the Sentencing Guidelines Commission, or the period of earned release awarded, whichever is longer. The term of community custody is to begin upon completion of the term of confinement, or upon transfer to community custody in lieu of the earned release. Except for terms of community custody under the special sex offender sentencing alternative, the department must discharge the offender from community custody on a date determined by the department within the range, or at the end of the period of earned release, whichever is later. The department may modify the discharge date based on risk and performance of the offender. At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court can extend any or all of the conditions for a period up to the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community custody. If the court extends a condition beyond the

community custody term, the department is not responsible for the supervision of the offender's compliance with the condition. If the offender violates a condition that has been extended by the court beyond the term of community custody, it is considered a violation of the sentence punishable by contempt of court.

Conditions: Unless waived by the court, the conditions of community custody must include that the offender report to the assigned community corrections officer as directed; work at department-approved education, employment, and/or community service; not possess or consume controlled substances; pay supervision fees; receive approval from the department of residence location and living arrangements; and submit to affirmative acts necessary to monitor compliance with the orders of the court. The conditions of community custody may also include requirements that the offender remain within, or outside of, a specified geographical boundary; have no contact with the victim of the crime or a specified class of individuals; participate in crime-related treatment or counseling services; not consume alcohol; and comply with any crime-related prohibitions. The offender may also be required to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, and to obey all laws.

If sex offender treatment is imposed, the treatment provider must be certified by the Department of Health unless the offender lives out of state, there is no certified provider within a reasonable geographic distance from the offender's home, or the treatment provider is employed by the Department of Corrections. Non-certified providers that treat offenders due to the fact that no certified provider is located within a reasonable distance from the offender's home must consult with a certified provider. Failure to participate in required treatment is a violation of the community custody or community placement.

The department must assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk, but the department may not impose conditions contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. An offender may request an administrative review of the condition imposed or modified by the department under rules adopted by the department. The condition remains in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of re-offending, or the safety of the community.

Within funds available for community custody, the department must determine the conditions and duration of community custody based on risk to community safety, and must supervise offenders on the basis of risk to community safety and conditions imposed by the court. The secretary is required to adopt rules for the implementation of this requirement.

Violations: If an offender violates a condition of his or her community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, or other sanctions available in the community. An offender who has violated the conditions of his or her community custody after having completed his or her maximum term of total confinement, can be sanctioned to total confinement by the department for up to 60 days for each violation.

An offender accused of violating a condition of community custody is entitled to a hearing prior to the imposition of sanctions, unless he or she waives the hearing. The department must develop, by rule, procedures for the hearing and a structure of graduated sanctions. Hearing procedures must include the following: (1) hearing officers must report through a chain of command separate from that of community corrections officers; (2) written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed must be provided to the offender, along with a statement of the offender's rights in the hearing process, and the offender's right to file a personal restraint petition after a final decision of the department; (3) the hearing must be electronically recorded and held within certain time limits; (4) the offender has the right to be present, to testify or remain silent, to have the assistance of an advisor if there is a language or communications barrier, to call witnesses and present documentary evidence, and to question witnesses. The offender can appeal the decision to a panel of three officers designated by the secretary. The sanction is to be reversed or modified if a majority of the panel finds that it was not reasonably related to the crime of conviction, the violation committed, the offender's risk of re-offending, or the safety of the community. A violation finding cannot be based on unconfirmed or unconfirmable allegations.

The department is required to consult with the Washington Association of Sheriffs and Police Chiefs and those counties in which the sheriff does not operate a correctional facility to determine the 1998 local correctional facilities bed utilization rate for offenders being held for violations of supervision. If the department's use of bed space for sanctions under the act exceeds the 1998 rate, the department must compensate the counties for the excess use. The rate of reimbursement will be the lowest rate charged by the county under its contract with a municipal government.

Community Supervision:

In General: For offenses committed on or after July 1, 2000, the one-year term of community supervision that the court may order on sentences of confinement for one year or less is converted to a one-year term of community custody, subject to the same conditions and sanctions described above.

First-Time Offender Waiver: The term of community supervision that the court may impose for a first-time offender is converted to community custody, subject to the same

conditions and sanctions described above. The term is limited to one year or, if treatment is ordered, up to the period of treatment ordered, but never more than two years. Offenders sentenced before the effective date of the act who have served at least one year of community supervision and have completed any treatment ordered are discharged from the remainder of their term of community supervision. During community custody, offenders report to the community corrections officer, not the court.

Unranked Felonies: For unranked crimes committed after July 1, 2000, the sentence may include up to one year of community custody, instead of one year of community supervision, subject to the terms and conditions of community custody discussed above.

Categorization of Crimes for Prosecuting Standards: Stalking, custodial assault, and violations of no-contact orders and protection orders in domestic violence cases are added to the "crimes against persons" category, thus requiring a mandatory term of community custody for crimes committed after July 1, 2000.

Tolling: A term of community custody is tolled during any time period in which the offender has absented himself or herself from supervision without approval. A term of community custody is also tolled when an offender is in confinement, unless the offender is detained in confinement for violating a condition of community custody and is later found not to have violated the condition. Tolling during periods of supervision for legal financial obligations only is eliminated.

Access to Records: For the purpose of determining, modifying, or monitoring compliance with the conditions of community custody, community placement, or community supervision, the department is given access to all relevant information relating to offenders that is in the possession of public agencies, except as specifically prohibited by law. The department may also require periodic reports from providers of treatment and services that have been ordered by the court or the department.

Legal Financial Obligations: The department is authorized to arrange for the collection of unpaid legal financial obligations through the county clerk or other entities if the clerk does not assume this responsibility. The costs of collection are to be paid by the offender.

Deployment of Community Corrections Staff: To the extent practicable, the department is required to deploy community corrections staff on the basis of geographic areas in which offenders are located. The department is also required to establish a systematic means of assessing risk to the safety of these communities.

Study of the Effect of Community Custody: The Washington State Institute for Public Policy must, subject to available resources, conduct a study of the effect of the use of community custody on recidivism and other relevant outcomes. The design for the study must be reported to the Legislature by January 1, 2000, a progress report must be made

by January 1 of each year after that, and a final report must be provided by January 1, 2010.

Defense to Liability: The act does not create immunity or a defense to liability for personal injury or death based solely on the availability of funds.

Rules Authority: The Secretary of Corrections is authorized to adopt rules to implement sections 1-13 of the act.

Amended Bill Compared to Engrossed Second Substitute Bill: The amended bill does not require legislative approval of any annual modifications to the community custody ranges that are proposed by the Sentencing Guidelines Commission. It adds a transition period for the changes to the first-time offender waiver provisions to take effect, and provides that offenders sentenced under this program before the effective date of the act, who have served at least one year of supervision and have completed any treatment ordered, are discharged from the remainder of their term of community supervision.

With respect to sex offender certification requirements, the fact that a treatment plan complies with rules adopted by the Department of Health is not an exception for certification. In conducting the study of the effect of the bill on recidivism, the Washington Institute for Public Policy will determine the relevant outcomes to be considered, instead of having them specified in the act. The study is subject to available resources.

The amended bill also provides that the act does not create immunity or a defense from liability for personal injury or death based solely on availability of funds, adds a null and void clause, and makes some language clarifications.

Appropriation: None.

Fiscal Note: Requested on March 24, 1999.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed. Section 10 of this act takes effect July 1, 2000, and applies to offenses committed on or after July 1, 2000. However, the bill is null and void unless funded in the budget.

Testimony For: (Striking amendment) This is really the most important sentencing policy change we have seen in the state since we went to the grid system in 1984. It fills a very important gap, not only for the purposes of protecting the public, but for helping offenders coming out of the system turn their lives around and become productive citizens. The committee striking amendment includes the best features of both the House

and Senate bills. The certification of sex offender treatment providers is an important piece of policy and it is appropriate that it be reinserted into this legislation.

(With concerns) The bill has important aspects that are supportable, including expanding the use of community custody. But concerns remain that everything in it is dependent on funding, and if resources are not provided for treatment and other options, all that would be left would be increased confinement sanctions. There is also a concern that too much emphasis is placed on the risk assessment tools which will result in mechanical sentences that leave little discretion to the courts. Of most concern are the due process aspects of the post-conviction proceedings under the bill. Though some important protections have been added, it is still ultimately the sentencing court that is the most qualified and appropriate to make these decisions. If an expedited procedure is necessary, the bill could provide that after the initial hearing by the Department of Corrections, the record and decision would be reviewed by the initial sentencing court, instead of the department. This would pass constitutional muster and not frustrate the goals of the department.

Testimony Against: None.

Testified: (In support) Senator Long, prime sponsor; Dick Van Wagenen, Governor's Policy Office; Joe Lehman, Department of Corrections; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(In support with concerns) David Donnan, Washington Defender Association.