

HOUSE BILL ANALYSIS

HB 1252

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

Brief Description: Enhancing supervision of offenders.

Sponsors: Representatives Ballasiotes, Lovick, McDonald, O'Brien, Cooper, Bush, Veloria, Kessler, Poulsen, Dickerson, McIntire, Scott, Edmonds, Wood, Conway, Cody, Rockefeller, Tokuda, Hurst, Santos, Haigh, Kenney, Campbell, Wolfe and Lantz; by request of Governor Locke.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

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 by providing punishment which is just; 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, serve as a clearinghouse and information center on adult and juvenile sentencing, and conduct ongoing research on sentencing and related issues.

Sentencing Hearings: The court is required to hold a sentencing hearing before imposing a sentence on a defendant. The court must consider presentence 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 presentence 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 an offense categorized as a sex offense committed after June 6, 1996 « 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: When sentencing for a sex offense or a serious violent offense committed between July 1, 1988, and July 1, 1990, 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, the court must include in the sentence a one-year term of community placement. When sentencing for a sex offense committed between July 1, 1990, and June 6, 1996, a serious violent offense, vehicular homicide or vehicular assault, committed on or after July 1, 1990, the court must include a term of community placement for two years or up to the period of earned release. When sentencing for a sex offense committed after June 6, 1996, the court must include a term of community custody of three years or up to the period of earned release. 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.

Public Disclosure of Information about Sex Offenders and Kidnaping Offenders: Public agencies are authorized to release information to the public regarding sex offenders and kidnaping offenders when the agency determines that the information is relevant and necessary to protect the public and counteract the danger created by the offender. The extent of the disclosure must be rationally related to the level of risk posed by the offender, the locations where the offender resides, and the needs of the affected community. Local law enforcement agencies are required to consider three risk levels when making the determination regarding extent of disclosure.

Summary:

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 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 minimum term in each range must not be less than one-half of the maximum term. 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 to be used for sentencing purposes. Risk assessment– is defined to mean the application of an objective instrument for assessing an offender’s risk of reoffense, taking into consideration the nature of the harm done by the offender, the place and circumstances of the offender related to risk, the offender’s relationship to any victim, and any information provided to the department by victims. 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. For crimes committed after July 1, 1998, and before July 1, 2000, violent offenses and all crimes against persons (whether or not a deadly weapon was used) are added to those offenses for which the court must include a one-year term of community placement as part of the sentence.

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 on 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 will not be 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 will be 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 court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and to obey all laws. The department must enforce these conditions within funds available for community custody.

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. The department must notify the offender of such conditions or modifications in writing. An offender may, within the close of the next business day after receiving such notice, 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 reoffending, or the safety of the community.

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. The department is required to establish a structure of graduated sanctions. 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.

If an offender requests a hearing on the alleged violation of community custody, certain procedural requirements apply: the offender shall be provided at least 24 hours written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed; the offender may call witnesses and present documentary evidence; the hearing must be electronically recorded; and the offender can request a review of the hearing officer's decision by 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 arbitrary or capricious.

The department is required to consult with the Washington Association of Sheriffs and Police Chiefs to establish a methodology for determining the existing local correctional facilities bed utilization rate for offenders being held for violations of conditions of supervision. If the department's use of bed space in local facilities exceeds the established rate, the department must negotiate terms and conditions for this use level.

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 two-year term of community supervision that the court may impose for a first-time offender is converted to community custody and limited to one year. The court is eliminated as an entity offenders may be required to report to.

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, and is 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 another entity if the clerk does not assume responsibility for collection. The costs of collection are to be paid by the offender.

Public Disclosure of Information about Sex Offenders and Kidnaping Offenders: In addition to sex offenders and kidnaping offenders, public agencies are also authorized to release information to the public regarding offenders that are on community custody, community placement, or community supervision when the agency determines that the information is relevant and necessary to protect the public and counteract the danger

created by the offender. The extent of the disclosure must be rationally related to the level of risk posed by the offender, the locations where the offender resides, and the needs of the affected community, but the three risk levels do not apply to the release of information regarding these offenders.

Rules: The Secretary of Corrections is authorized to adopt rules to implement the act.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed. Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000.