

***Criminal Justice & Corrections  
Committee***

***HB 1722***

***Brief Description:*** *Providing community custody sentences for substance abuse offenses.*

***Sponsors:*** *Representatives Dickerson, O'Brien, Kagi and McIntire.*

***Brief Summary of Bill***

- *Requires all offenders convicted of a nonviolent drug possession or delivery offense to be sentenced directly to community custody and drug treatment instead of jail or state prison;*
- *Makes certain drug offenders ineligible for community custody if they refuse substance abuse treatment or are convicted of a drug offense involving a firearm or a sex offense;*
- *Requires all drug treatment providers to report on each offender's progress during their participation in the treatment;*
- *Dismisses all charges for offenders successfully completing substance abuse treatment.*

***Hearing Date:*** *2/16/01*

***Staff:*** *Yvonne Walker (786-7841).*

***Background:***

*Ordinarily, a person convicted of a controlled substance offense would receive a sentence based upon his or her prior criminal history and the seriousness of the offense. The offender's community custody would begin upon the completion of his or her term of confinement or upon transfer to community custody in lieu of the earned release. The Department of Corrections (DOC) usually discharges an 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. The community custody range for a person convicted of a drug offense is nine to 12 months.*

***Community Custody 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.*

*The department must assess the offender's risk of re-offending 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.*

***Sanctions.*** *If an offender violates a condition of 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.*

### ***Summary of Bill:***

*This act is known as the Substance Abuse and Crime Prevention Act.*

*Any offender convicted of delivery or possession of a controlled substance or a criminal attempt, criminal solicitation, or criminal conspiracy to commit a controlled substance violation must be sentenced to community custody.*

***Community Custody Conditions.*** *An offender is ineligible for community custody if:*

- The offender has, before the commission of the current controlled substance violation, been convicted of two or more felony controlled substance violations;*
- The offender has current or prior convictions for a sex offense;*
- The offender has current convictions for a violent offense;*
- The offender has prior convictions for a violent offense unless he or she has spent five consecutive years in the community crime-free;*
- The violation involves a firearm sentence enhancement;*

- *The violation involves the manufacture, delivery, or possession with intent to deliver methamphetamine;*
- *The offender refuses to participate in the crime-related treatment or counseling services as a condition to his or her community custody; or*
- *The offender has (1) been convicted on two separate occasions of delivery or possession of a controlled substance or a criminal attempt, criminal solicitation, or criminal conspiracy to commit such a violation; (2) has participated in two separate courses of crime-related treatment or counseling services under community custody; and (3) is found by the court to be unamenable to crime-related treatment or counseling services.*

*In addition, the term of community custody for any offender sentenced for a controlled substance offense must include the following conditions:*

- *The offender must report to and be available for contact with the assigned community corrections officer as directed;*
- *The offender must participate in some type of the DOC-approved education, be employed, or perform community service;*
- *The offender must not possess or consume controlled substances with the exception of issued prescriptions;*
- *The offender must participate in crime-related treatment or counseling services;*
- *The offender must pay supervision fees as determined by the DOC; and*
- *The offender must submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the DOC.*

*As a part of any community custody sentence imposed on an offender the court may also order any of the following special conditions:*

- *Require the offender to remain within, or outside of, a specified geographical boundary;*
- *Prohibit the offender from having direct or indirect contact with the victim of the crime or a specified class of individuals;*
- *Prohibit the offender from consuming alcohol;*
- *Require the offender, if reasonably able to do so, to contribute to his or her own treatment or counseling services; and*
- *Require the offender to comply with any crime-related prohibitions.*

***Drug treatment/counseling.*** *Within seven days of an order imposing community custody, the DOC must notify the drug treatment provider designated to provide the treatment or counseling services to the offender. Within 30 days of receiving that notice, the treatment provider must prepare a treatment plan and forward it to the DOC. On a quarterly basis after the offender begins the drug treatment program, the treatment provider must prepare and forward a progress report to the DOC.*

*If at any point during the course of drug treatment the treatment provider notifies the DOC that the offender is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the department may modify the terms of community custody to ensure that the offender receive the appropriate drug treatment or program. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. The department must notify the offender in writing of any such conditions or*

*modifications. In setting, modifying, and enforcing conditions of community custody, the department must be deemed to be performing a quasi-judicial function.*

*If at any point during the course of drug treatment the treatment provider notifies the department that the offender is unamenable to the drug treatment provided and other forms of drug treatment, the department may petition the court to revoke community custody. At the revocation hearing, unless the offender proves by a preponderance of the evidence that there is a drug treatment program to which he is amenable, the court may revoke community custody and impose other available sanctions.*

*Crime-related treatment or counseling services that are a required condition of community custody may not exceed 12 months. In addition, additional aftercare services as a condition of community custody may be required for up to six months.*

***Sanctions.*** *Sanctions that a court may impose may include home detention with electronic monitoring, inpatient treatment, daily reporting, curfew, community service, education or counseling services, supervision enhanced through electronic monitoring, or any other sanctions available in the community. Sanctions do not include incarceration.*

***Dismissal of charges upon successful completion of drug treatment.*** *At any time after completion of treatment, an offender may petition the sentencing court for dismissal of the charges. If the court finds that the offender successfully completed drug treatment, and substantially complied with the conditions of community custody, the conviction on which the community custody was based must be set aside and the court must dismiss the indictment or information against the offender. In addition, the arrest on which the conviction was based must be deemed to have never occurred and the offender must thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.*

***Appropriation:*** *None.*

***Fiscal Note:*** *Not Requested.*

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