

HOUSE BILL REPORT

HB 1860

As Passed House:

March 13, 2003

Title: An act relating to hearings concerning violations by sex offenders of postrelease conditions.

Brief Description: Revising procedures for hearings concerning violations by sex offenders of postrelease conditions.

Sponsors: By Representatives O'Brien and Mielke; by request of Indeterminate Sentence Review Board.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/25/03, 2/28/03 [DP].

Floor Activity:

Passed House: 3/13/03, 96-0.

Brief Summary of Bill

- Authorizes a designee of the Indeterminate Sentence Board (ISRB) to administer hearings for any sex offender accused of violating his or her community custody status.
- Expands the time-line for holding hearings for disciplinary proceedings.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Yvonne Walker (786-7841).

Background:

A sex offender that has been released by the ISRB and who violates a condition of community custody can be arrested and detained in a more restrictive confinement status. A system of graduated sanctions may be imposed on an offender who violates his or her

community custody (e.g., home detention, electronic monitoring, work crew, curfew, etc.), or the offender's release to community custody may be suspended or revoked. The offender is entitled to an administrative hearing before the ISRB prior to the imposition of sanctions. Hearings for disciplinary proceedings can only be conducted by direct members of the ISRB unless entered into an agreement with the Department of Corrections to use hearing officers.

Anytime an offender is accused of violating his or her community custody status, that offender must receive written notice of his or her violation. The offender is then entitled to a hearing prior to the imposition of sanctions, unless he or she waives the hearing. All hearings must be electronically recorded and 1) held within 15 working days, but not less than 24 hours after notice of the violation, if the offender is not being held in custody; or 2) held within five working days, but not less than 24 hours after notice of the violation, if the offender has been arrested and is being held in total confinement.

At the hearing the offender has the right to be present, to testify or remain silent, to have the assistance of a qualified advisor if he or she has a language or communications barrier, to call witnesses and present documentary evidence, and to question witnesses. In addition, the person has a right to an attorney if revocation of community custody is a possible sanction. The offender can appeal the decision to a panel of three officers designated by the chair of the ISRB. The sanction is to be reversed or modified if a majority of the panel finds that the sanction 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.

Currently, the ISRB administers approximately 40 hearings per year.

Summary of Bill:

The time line for holding hearings for disciplinary proceedings of sex offenders accused of violating their community custody status is expanded and such hearings may be administered by members other than the ISRB members.

A provision is added to authorize any member of the ISRB or his or her designee to hold an administrative hearing for any sex offender accused of violating any condition or requirement of community custody, prior to the imposition of sanctions. If the accused offender is not being held in confinement, the hearing must take place within 30 days (instead of 15 working days) upon receiving notice of the violation. If the accused offender is being held in custody, then the hearing must take place within 30 days (instead of five working days) upon receiving notice of the violation. The person has a right to an attorney if revocation of community custody is a probable sanction (as opposed to a possible sanction).

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is agency requested legislation which is basically a management efficiency tool. It has three elements. The first element would allow the ISRB (Board) to appoint present hearing officers to conduct hearings. Right now the Board is comprised of two part-time members and one full-time member. If the Board is able to use hearing officers than they will literally be able to triple their workload.

The second element relates to violation hearings. Right now violation hearings, whether in custody or not, are usually held within 30 days. The present five and 15 day time periods in statute are just not realistic. The main problem with this is that it ordinarily takes time to appoint an offender's defense counsel and once the counsel is appointed he or she routinely requests for a continuance so that they can properly prepare their case.

The third element relates to the current statute that states that where revocation of a community custody is a "possible" sanction, an attorney must be appointed. The vast number of violations that the Board currently hears are technical violations and there is a difference between technical and substantive violations. The Board never sends an offender back to prison because he or she misses a couple of appointments. The penalty is usually just increased reporting requirements. However if the offender's behavior suggests that he or she is back on a deviance cycle and is at a clear risk of returning to prison, then that offender needs an attorney. As a result, when the Board makes a probable cause determination that the violations would probably (instead of possibly) subject this person back to incarceration then an attorney would be appointed. However, if the Board makes the probable cause determination that the violations are clearly technical violations then the violations can be handled in the field.

Testimony Against: One of the cornerstones of our criminal justice system is the concept of fairness and the ability of a person to defend oneself. Right now a person has the right to a hearing within five days if in custody or within 15 days if the person is out of custody and the person has the right to counsel if it is "possible" that continued confinement will result. The hearings are currently administered by qualified, good-intentioned Board members, however those members will not be on the parole board forever.

There is no standard for hearing officers and as a result they should not be allowed to administer parole hearings. If they are allowed to hold hearings then there should be some written standards, guidelines, and requirements for the officers to hold hearings.

There are also concerns about the extended 30-day waiting period. It is true that in some cases, where a person is looking at a lifetime sentence, then his or her attorney may need extra time to prepare for his or her client's case. However the pressure should be kept on at all times to make sure hearings are held in a timely manner.

The last concern is the changing of the right to an attorney in situations only where revocation is a probable situation as oppose to a possible situation of parole revocation. There are no guidelines to determine when a probable situation will be made.

Testified: (In support) Representative O'Brien, prime sponsor; and John Austin, Indeterminate Sentence Review Board.

(Opposed) Jennifer Shaw, Washington Association of Criminal Defense Lawyers and Washington Defender Association.