

# HOUSE BILL REPORT

## ESSB 5990

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### As Passed House - Amended:

April 24, 2003

**Title:** An act relating to times and supervision standards for release of offenders.

**Brief Description:** Changing times and supervision standards for release of offenders.

**Sponsors:** By Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Hargrove, Stevens, McAuliffe, Carlson, Regala, Parlette, Rasmussen and Winsley).

### Brief History:

#### Committee Activity:

Appropriations: 4/22/03, 4/23/03 [DPA].

#### Floor Activity:

Passed House - Amended: 4/24/03, 84-13.

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

- Changes the amount of earned release time certain offenders may earn.
- Changes the manner in which the Department of Corrections (DOC) must supervise offenders in the community.
- Moves up the effective date of drug sentencing changes enacted during the 2002 Legislative Session from July 1, 2004, to July 1, 2003.
- Changes the way in which savings from the drug sentencing changes are calculated and utilized.
- Authorizes the county clerks to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. The DOC must supervise the collection of legal financial obligations only while an offender is incarcerated or while the DOC is authorized to supervise the offender in the community.
- Relieves the state and local counties from liability for the acts of an offender who is not under supervision by the DOC, but remains under the jurisdiction of the court for payment of legal financial obligations.

· Allows the DOC to make mandatory deductions for legal financial obligations, including victim's compensation, restitution, and cost of incarceration from any worker's compensation benefit an offender receives.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, DeBolt, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

**Staff:** Jim Morishima (786-7191).

### **Background:**

#### I. Earned Release

The Department of Corrections (DOC) may reduce an offender's term of confinement through earned release time. The DOC grants earned release time for good behavior and good performance and can take away earned release time for disciplinary reasons. An offender incarcerated for a serious violent offense or a sex offense that is a class A felony may not have his or her term of confinement reduced by more than 15 percent via earned release time. An offender incarcerated for any other offense may not have his or her term of confinement reduced by more than 33 percent via earned release time.

#### II. Supervision of Offenders

A court may sentence an offender to a term of community custody, community placement, or community supervision. In addition, for certain crimes, a term of community custody, community placement, or community supervision is mandatory. Offenders sentenced to a term of community custody, community placement, or community supervision are supervised by the DOC.

Under the Offender Accountability Act, the DOC is required to concentrate its resources on offenders who pose the highest risk. To that end, the DOC employs a risk classification system designed to consider the offender's risk of re-offense and the nature of harm done by the offender. The DOC classifies offenders into four risk management categories, Risk Management (RM) A through D, with A level offenders being the highest risk.

#### III. Legal Financial Obligations

Under the Sentencing Reform Act, the DOC is responsible for supervising offenders whose sentence includes the payment of legal financial obligations (LFOs). LFOs comprise court-imposed obligations to pay any of the following: Restitution to the victim; statutorily imposed crime victims' compensation fees; court costs; county or inter-local drug fund assessments; court-appointed attorneys' fees and costs of defense; fines; reimbursement for emergency response expenses in cases of a driving while intoxicated (DWI)-related vehicular assault or vehicular homicide convictions; and any other financial obligation assessed to the offender as a result of a felony conviction.

Generally, the DOC must supervise an offender's compliance with the payment of LFOs for 10 years following conviction or 10 years after the offender is released from total confinement. The DOC is not responsible for supervising the offender during any subsequent period of time that the offender is under the court's supervision for payment of LFOs or restitution.

Some county clerks have engaged in LFO collection efforts and have been able to increase collections, resulting in increased victim restitution payments and in increased revenues to both the state and counties.

#### IV. Drug Sentence Reform

In 2002, legislation was passed that changed the manner in which most drug crimes will be sentenced. The legislation eliminated double and triple scoring for certain drug offenses and instituted a new drug grid, which will go into effect on July 1, 2004. Savings from these sentencing changes are to be used to fund drug courts and treatment and support services for drug offenders.

The DOC must use a methodology developed by the DOC, the Sentencing Guidelines Commission, the Office of Financial Management, and the Caseload Forecast Council to determine the savings generated by the new drug sentencing laws. Twenty-five percent of this amount must be transferred to the Violence Reduction and Drug Enforcement Account to be used solely for providing drug and alcohol treatment services to offenders who are: 1) confined in a state correctional facility; 2) sentenced under the new drug sentencing laws; and 3) assessed with an addiction or substance abuse problem that if not treated would result in addiction.

The remaining 75 percent of the amount (but in no case more than \$8,250,000) must be transferred to the Criminal Justice Treatment Account. In the first year the amount exceeds \$8,250,000, the amount must be increased on an annual basis by the implicit price deflator. The amount transferred to the Criminal Justice Treatment Account must be: 1) transferred to the counties; and 2) distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney.

## **Summary of Amended Bill:**

### I. Earned Release

The amount of earned release time an offender convicted of a serious violent offense or a class A felony sex offense may earn is reduced. Such an offender may only have his or her term of confinement reduced by up to 10 percent (instead of 15 percent) via earned release time.

The amount of earned release time certain offenders may earn is increased. The DOC must perform a risk assessment of eligible offenders and classify them into four risk groups. An offender may have his or her term of confinement reduced by up to 50 percent (instead of 33 percent) via earned early release time if he or she:

- is classified in one of the two lowest risk categories;
- is confined for an offense other than a violent offense; a sex offense; manufacture, delivery, or possession with intent to deliver methamphetamine (or an attempt, solicitation, or conspiracy to do so); delivery of a controlled substance to a minor (or an attempt, solicitation, or conspiracy to do so); a crime against persons; a felony domestic violence offense; or residential burglary; and
- has no prior conviction for any of these offenses.

The increase in the amount of earned release time an offender may earn expires on July 1, 2010. The increase applies both prospectively and retroactively.

The Legislature declares that the changes to the maximum percentages of earned release time do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The Legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time.

The Washington State Institute for Public Policy (WSIPP) must study the results of the changes in earned release. The study must determine whether the changes affect the rate of recidivism or the type of offenses committed by persons whose release dates were affected. The WSIPP must report its findings to the Legislature and the Governor no later than December 1, 2008.

### II. Supervision of Offenders

The DOC must supervise every offender sentenced to a term of community custody, community placement, or community supervision who:

- is classified as RM-A or RM-B;
- has a current or previous conviction for a sex offense; a violent offense; a crime against persons; felony domestic violence; residential burglary; manufacture, delivery,

or possession with the intent to deliver methamphetamine (or an attempt, solicitation, or conspiracy to do so); or delivery of a controlled substance to a minor (or an attempt, solicitation, or conspiracy to do so);

- has conditions relating to chemical dependency treatment in his or her sentence;
- was sentenced under the Special Sex Offender Sentencing Alternative or the First Time Offender Waiver; or
- is subject to supervision under the interstate compact for adult offender supervision.

The DOC may not supervise any other type of offender. The supervision changes expire on July 1, 2010.

For an offender sentenced to less than one year in jail, the court may impose a term of community custody only if the crime for which the offender is convicted is a sex offense, a violent offense, a crime against persons, or a drug offense.

### III. Legal Financial Obligations

The DOC is only authorized to supervise an offender's compliance with LFO payments during any period within which it is authorized to supervise the offender in the community.

The county clerks are authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. The DOC must supervise the collection of legal financial obligations only while an offender is incarcerated or while the DOC is authorized to supervise the offender in the community. When the offender completes his or her term of supervision, or if the offender is not subject to a supervision order in the community, the DOC must notify the Administrative Office of the Courts (AOC) of the termination of the offender's supervision and provide information to enable the county clerk to monitor the payment of the remaining legal financial obligations. The AOC will provide the billing services and maintain its existing statewide database of offender payments, based on payment information submitted by the county clerks.

When an offender with outstanding legal financial obligations has completed the non-financial requirements of his or her sentence, the DOC will provide the county clerk with a notice that the offender has completed all the non-financial requirements of the sentence. When the offender completes payment of the legal financial obligations, the county clerk will notify the court, including the notice from the DOC. The court then issues a certificate of discharge for the offense to the offender, either in person, or to the offender's last known address.

The Washington Association of County Officials, in consultation with the county clerks, will determine a funding formula for allocation of moneys appropriated for the purposes of collecting legal financial obligations and will report to the Legislature and the AOC by

September 1, 2003. The association also reports annually beginning December 1, 2004, to the appropriate committees of the Legislature on the amounts of legal financial obligations collected by the county clerks.

The AOC shall distribute the funds appropriated to the counties for purpose of the county clerk collection budgets by October 1, 2003, without deducting any portion for administrative costs. The AOC may expend those funds appropriated by the Legislature for legal financial obligation billing.

Existing language stating that the DOC, the state, and its employees are not liable for payment of legal financial obligations is expanded to the counties and their employees. The state, the DOC, the counties, and their employees are not liable for the acts of an offender who is not under supervision by the DOC, but remains under the jurisdiction of the court for payment of legal financial obligations.

The DOC may make mandatory deductions for legal financial obligations, including victim's compensation, restitution, and cost of incarceration from any worker's compensation benefit an offender receives. Monthly payment schedules are not a limit on civil collections.

#### IV. Drug Sentence Reform

The effective date of the changes in drug sentencing is moved from July 1, 2004 to July 1, 2003.

Language pertaining to use of the methodology to determine the savings generated by the drug sentencing changes is eliminated. Instead, specific amounts are appropriated to the Violence Reduction and Drug Enforcement Account (\$2,984,000) and the Criminal Justice Treatment Account (\$8,950,000). The limitation on using funds from the Violence Reduction and Drug Enforcement Account only for persons sentenced under the new drug sentencing laws is removed; the funds can be used to provide drug and alcohol treatment to offenders who are: 1) Confined in a state correctional facility; and 2) assessed with an addiction or substance abuse problem that if not treated would result in addiction.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date of Amended Bill:** Sections 1 through 12, 20, and 28 take effect July 1, 2003. Sections 13 through 19, and 21 through 27 take effect October 1, 2003.

**Testimony For:** (In support) We recognize the need for very hard decisions. The

Governor assumed \$100 million in savings as result of sentencing and supervision changes. However, this proposal was too risky and relied on a risk assessment for good-time and supervision changes. Senate Bill 5990 is a better policy decision, keeps the public safe, and saves money. This bill sets out certain restrictions, including specific current or prior crimes. We didn't just look at current crimes, we looked at priors like methamphetamine crimes, serious violent offenses, and sex offenses. This bill goes beyond the Department of Corrections (DOC) risk assessment and also excludes domestic violence, burglars, and sex offenders.

For the good-time changes that we are talking about, offenders would be released two to four months early. The public is not going to be any safer by keeping them longer. In the worst case scenario that we examined, an offender would be released five to six months early; and that's rare. When we developed this legislation there were questions about what we were buying for RM-C and RM-D supervision anyway. In many cases offenders simply call in once a week.

For the legal financial obligations, certain counties are already collecting the obligations. They have an incentive to collect because they get part of the money. In many cases, they have been able to increase collections of restitution and other fees.

This bill doesn't jeopardize public safety. In addition, this bill decreases earned early release time for serious violent and sex offenses. If you vote against this bill, you are voting to let serious violent and sex offenders out earlier. This bill had 41 bipartisan votes in the Senate.

(With concerns) We need to supervise RM-A and RM-B offenders. While there are savings for RM-C and RM-Ds no longer being supervised, there is concern about whether there will be enough money for the DOC to supervise the high-risk offenders.

(Other) If we want to be truthful about eliminating RM-C and RM-D supervision, we should eliminate it entirely and not do the good-time changes. People want truth-in-sentencing. Fifty percent good time leads to the wrong impression for the people. RM-C and RM-D supervision is illusory and a myth. It's kiosk reporting. Rather than setting out certain exclusions, we should eliminate all RM-C and RM-D supervision. Last year the Governor proposed to eliminate all RM-C and RM-D supervision and estimated a \$53 million savings. While not clear how good those numbers are -- you could probably take off \$10 million -- it's a tort liability to continue to supervise these offenders.

**Testimony Against:** None.

**Testified:** (In support) Senator Hargrove, prime sponsor; Representative O'Brien; and Senator Stevens.

(With concerns) Larry Erickson, Washington Association of Sheriffs and Police Chiefs.

(Other) Tom McBride, Prosecutors Association; Randy Gaylord, San Juan County Prosecutor; and Greg Zempel, Kittitas County Prosecutor.