

# HOUSE BILL REPORT

## E2SSB 5070

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**As Reported by House Committee On:**

Human Services

Appropriations

**Title:** An act relating to reduction of offender recidivism.

**Brief Description:** Changing provisions affecting offenders who are leaving confinement.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Carrell, Regala, Hargrove, Kline, Weinstein, Stevens, Brandland, Parlette, McCaslin, Kastama, Holmquist, Zarelli, Pridemore, Schoesler, Clements, Rasmussen, Swecker, Roach, Franklin, Delvin, Sheldon, Eide, Spanel, Hewitt, Hatfield, Keiser, Pflug, McAuliffe, Berkey, Haugen, Fairley, Murray, Tom, Kohl-Welles, Shin and Kilmer).

**Brief History:**

**Committee Activity:**

Human Services: 3/20/07, 3/28/07 [DPA];

Appropriations: 3/31/07 [DPA(HS)].

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

- Changes several areas of law relating to transitioning offenders into the community upon release from Department of Corrections facilities including work release, community custody, Community Justice Centers for programming and information, education, licensing, housing, and requiring reentry planning.

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### HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Dickerson, Chair; Roberts, Vice Chair; Walsh, Assistant Ranking Minority Member; Darneille, McCoy and O'Brien.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ahern, Ranking Minority Member and Bailey.

**Staff:** Sonja Hallum (786-7092).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### **Offender Reentry Issues**

Each year, thousands of offenders return to the community from Washington prisons after completing their sentences. Research from the Washington State Institute of Public Policy (WSIPP) shows that approximately 54 percent of these offenders will commit a new felony within 13 years. Further, the Washington Caseload Forecast Council estimates that under existing policies, Washington's incarceration rate will increase 23 percent by the year 2019.

In 2005, the Legislature directed the WSIPP to report, by October 2006, whether evidence-based and cost-beneficial policy options exist to alleviate the need to build more prisons. The WSIPP concluded that several programs directed to adult offenders can have a positive impact on recidivism and produce significant cost savings for Washington.

### **Earned Release**

The Department of Corrections (DOC) may reduce an offender's term of confinement through earned release time. Earned release time may be granted for good behavior and good performance and can be taken away for disciplinary reasons.

An offender convicted of a serious violent offense or a class A felony sex offense, on or after July 1, 2003, may obtain earned release time. Such an offender may not have his or her term reduced by more than 10 percent via earned release time.

Certain other offenders can have their confinement reduced by up to 50 percent. 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 via earned early release time if he or she is among the lowest risk offenders and does not have criminal history that would preclude the offender from being eligible for the earned release.

### **Education**

In 1995, the Legislature adopted a law requiring the DOC to prioritize its available resources to meet the following educational goals, specified in order of priority:

- (1) achievement of basic academic skills through obtaining a high school diploma or its equivalent, and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;
- (2) additional work and education programs that are compatible with an offender's case management plan; and
- (3) other work and education programs as appropriate.

The 1995 legislation required the DOC to develop a formula by which inmates would contribute to the cost of certain educational and vocational programs based on their ability to pay. The formula requires offenders to pay a portion of the costs or tuition for any second or subsequent vocational program associated with their work programs and any Associate of Arts or Baccalaureate degree programs that are part of their case management plans. The formula also requires offenders to pay all costs and tuition of any post-secondary academic program

and any second or subsequent vocational program that is not part of their case management plan.

### **Community Custody**

"Community custody" means that portion of an offender's sentence of confinement served in the community subject to controls placed on the offender's movement and activities by the DOC.

If the offender violates the conditions of community custody, the offender may be required to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition on the alleged violation. If a sex offender violates any condition of community custody, the DOC may impose a sanction of up to 60 days confinement in a local correctional facility for each violation. If the offender has served his maximum term of confinement, the DOC may impose sanctions available in the community.

An offender accused of violating a condition of community custody is entitled to a hearing before the DOC before sanctions are imposed. The hearing is considered a disciplinary hearing and is not subject to the requirements of the Administrative Procedure Act.

### **Searches**

If there is reasonable cause to believe that an offender on community custody or community supervision has violated a condition or requirement of supervision, an offender may be required to submit to a search of the offender's person, residence, automobile, or other personal property.

### **Order of Discharge**

When an offender has completed all requirements of the sentence, including any and all legal financial obligations, the offender is issued a certificate of discharge. The certificate of the discharge has the effect of restoring all civil rights lost upon conviction.

Legal financial obligations 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.

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

#### **PART I - Local Law and Justice Councils**

The duties of local Law and Justice Councils are revised to include consideration of mechanisms for sharing information regarding offenders and developing partnerships between

the DOC and community policing and supervision programs to facilitate supervision of offenders.

## **PART II - Liability**

The state, local government, or employees of either are not liable for acts or omissions in providing supervision services, including assessment and services associated with an individual reentry plan, unless the act or omission constitutes gross negligence.

Community Corrections Officers (CCO) are not liable for civil damages arising from acts or omissions which occur when the CCO interacts with a third party who is attempting to intervene in a situation in which the CCO is contacting an offender on community custody or community supervision or when the CCO is providing assistance to a law enforcement officer at the request of the law enforcement officer.

## **PART III - Individual Reentry Plan**

The DOC is required to develop an Individual Reentry Plan (IRP) for all inmates committed to the jurisdiction of the DOC. The IRP establishes a plan for the offender during the period of incarceration through release into the community. The plan is created with input from the offender and addresses programming for the offender while incarcerated and a plan for the offender to follow upon release that includes public safety concerns upon release, connection to a Community Justice Center, housing, employment, education, treatment needs, family reunification, and other areas needed to facilitate successful reintegration into the community. The plan may consist of one document or several individual documents.

The initial IRP is created following the initial assessment the offender receives within 45 days of entering the DOC facility. The plan is updated during the period the offender is incarcerated.

## **PART IV - Partial Confinement and Supervision**

### **Community Justice Centers**

The DOC must continue to establish Community Justice Centers (CJC) throughout the state with a minimum of six facilities to be established by December 1, 2009, and three additional facilities to be established by December 1, 2011. The CJs must include a violator program to utilize sanctions for violations of supervision, an employment opportunity program, and resources for connecting offenders with services. The DOC must also designate a transition coordinator to facilitate connections between the former offender and the community.

Prior to locating a new CJC, the DOC must notify the county and/or city within which the CJC is proposed and consider comments received in response to the notice. The DOC must also make efforts to enter into a memoranda of understanding or agreements with the local community policing and supervision programs to facilitate and coordinate the supervision of offenders.

The DOC must prepare a list of counties in which work release facilities and CJs are anticipated to be located within the next three years and transmit the list to the Office of Financial Management and the counties on the list.

### Earned Release

In order to qualify for 50 percent earned release, an offender must participate in programming and must not have committed a new felony while under supervision.

If the DOC denies transfer to community custody in lieu of earned early release, the DOC may transfer the offender to partial confinement for up to three months in lieu of earned early release.

The offender may spend no more than the final six months of the offender's term of confinement in partial confinement, in addition to any time exchanged for partial confinement.

### Violations

If an offender violates any condition of community custody, the CCO shall determine the appropriate sanction based on the CCO's knowledge and experience with the offender, the seriousness of the violation, and other factors deemed relevant by the CCO.

An offender who is arrested while on community custody for a new felony offense must be held in total confinement until a DOC hearing on the violation or until being formally charged for the offense.

### Search of Offenders

The Legislature finds that all searches of offenders on community custody are reasonable even absent reasonable cause because offenders on community custody have the same expectation of privacy as offenders who are incarcerated, and offenders who are incarcerated are subject to random, unannounced searches.

When a court sentences an offender to a period of community custody for a crime committed on or after the effective date of the act, the court must impose the condition that the offender submit to random, unannounced inspections of his or her person, residence, automobile, or other personal property while on community custody. When the offender is on community custody, the offender will then be subject to searches without reasonable cause to believe that he or she violated the conditions of community custody.

### Review of Policy

A task force is created to review laws related to community custody and community supervision. The task force is comprised of 15 members, including legislative and non-legislative members. The task force is required to review statutes related to community custody and community supervision of offenders, make recommendations related to sentencing to assist CCOs in more easily identifying statutory requirements related to an offender's sentence and community custody and supervision, make recommendations

regarding the violation hearing process, and make recommendations regarding simplifying statutory language. The task force is required to report to the Legislature by November 1, 2007.

### **PART V - Education**

The DOC is to fund basic academic skills including obtaining a high school diploma or its equivalent; achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release; and additional work and education programs necessary for compliance with an offender's IRP, except post-secondary education.

Other appropriate vocational, work, or education programming that does not meet the above requirements must be paid by the inmate according to a sliding scale formula.

The DOC must implement post-secondary education degree programs within state correctional institutions to the extent funding is provided. An inmate must pay for the costs of a post-secondary education degree program by paying for the program themselves or by receiving funding from a third party.

A third party may pay all or a portion of the costs and tuition for any programming. Payments for this purpose must not be subject to any of the deductions usually taken from payments to the offender that are applied toward the legal financial obligations of the offender.

The DOC and the State Board for Community and Technical Colleges (State Board) must investigate and review methods to optimize educational and vocational programming opportunities for offenders, including the need for an educational loan program in the institutions. The DOC and the State Board must report to the Governor and the Legislature no later than November 15, 2007.

Several requirements are removed relating to requirements for electronic learning methods in the institutions.

### **PART VI - Employment Barriers**

The DOC and the Department of Licensing must enter into an agreement to expedite procedures to assist offenders in obtaining a drivers license or identification card upon release from a DOC institution. The Department of Licensing is also required to convene a work group to review and recommend changes to occupational licensing laws and policies to encourage the employment of individuals with criminal convictions while ensuring the safety of the public.

### **PART VII - Housing**

A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents that he or she has a policy of renting to offenders.

A pilot program is created to provide transitional housing to offenders in two pilot sites. The sites must be located in areas in which a CJC is currently located. The housing programs must contain an educational component.

An offender may obtain the release of funds from his or her inmate savings account prior to discharge for the purpose of securing appropriate housing.

### **PART VIII - Restoration of Civil Rights**

A convicted felon's right to vote is provisionally restored once he or she is no longer under the jurisdiction of the DOC. The sentencing court may revoke the provisional restoration of voting rights if the person willfully fails to comply with the terms of his or her legal financial obligations.

The county clerk must enter the names of all persons whose rights have been restored or whose provisional rights have been revoked. Twice a year the Secretary of State must compare the list of registered voters to the list of felons who are not eligible to vote.

### **PART IX - Oversight Committee**

A Legislative Corrections Oversight Committee (Committee) is created to monitor activities of the DOC and ensure compliance with relevant statutes, laws, and policies. Among other duties, the Committee may request and receive reports regarding implementation of the recommendations of the Joint Task Force on Offenders programs, sentencing and supervision, the implementation of provisions of this act, and monitor coordination and collaboration between local government and the DOC.

### **PART X - Miscellaneous**

An offender who is eligible for the Special Drug Offender Sentencing Alternative (DOSA) may not be released from confinement unless there is space available in a treatment program.

### **Amended Bill Compared to Engrossed Second Substitute Bill:**

#### **PART I - Local Law and Justice Councils**

The amended bill removes the Community Transition Coordinating Networks. However, the requirement in E2SSB 5070 that local Law and Justice Councils are required to review information sharing and partnerships to improve supervision of offenders is retained.

#### **PART II - Liability**

Immunity is added in the amended bill for CCOs who are acting at the request of law enforcement or when interactions occur with third parties who are attempting to intervene when the CCO is contacting a person on community custody or supervision.

#### **PART III - Individual Reentry Plan**

The amended bill replaces the language relating to the IRP with the language in SHB 1874. However, the amended bill retains language that the IRP does follow the offender into the community.

#### **PART IV - Partial Confinement and Supervision**

##### Community Justice Centers

No change to the Senate bill.

##### Earned Release

No change to the Senate bill.

##### Violations

The amended bill removes the language requiring an offender to be placed in total confinement if the offender commits a third violation of community custody and replaces this requirement with the requirement that the sanction for a violation be determined by the CCO based on the CCO's knowledge and experience with the offender, the seriousness of the violation, and other factors deemed relevant by the CCO.

The requirement that an offender who is sanctioned for total confinement for a violation of community custody must serve the entire term of the sanction in total confinement is removed.

##### Search of Offenders

Language is added that permits random, unannounced searches of offenders without reasonable cause to believe they committed a violation of the conditions of community custody.

##### Review of Policy

The amended bill replaces all E2SSB 5070 policy review language with the creation of a task force to review laws related to community custody and community supervision.

#### **PART V - Education**

The language in the amended bill is the same as E2SSB 5070, except that the educational loan program for post-secondary degree programs is removed and a requirement is added that the DOC and the State Board must review post-secondary programs in institutions, including the need for a loan program.

#### **PART VI - Employment Barriers**

The amended bill removes the business and operating tax credit and the utility tax credit.

#### **PART VII - Housing**



The Offender Reentry Transitional Housing Assistance Program is replaced with a Pilot Program to provide transitional housing in two pilot sites.

### **PART VIII - Restoration of Civil Rights**

No change to the Senate bill.

### **PART IX - Oversight Committee**

All references to the Corrections Ombudsman in the Oversight Committee are removed.

### **PART X - Miscellaneous**

Adds new language prohibiting an offender who is eligible for the Special Drug Offender Sentencing Alternative may not be released from confinement unless there is space available in a treatment program.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

### **Staff Summary of Public Testimony:**

(In support of original bill) This bill is a collaborative effort of many Senators, House members, and other individuals. The bill is very comprehensive and addresses every issue in the report. It is really about public safety. The corrections system is at a crossroads: we can build more prisons or cut the recycling of offenders. According to the WSIPP, we can realize a 20-30 percent reduction in recidivism by using evidence-based programming which means a savings for the state and local government. Ninety percent of the people who go to prison return to the community, so we need to prepare for their return. The Governor's budget supports reentry. Organized labor supports this bill. The WASPC is excited about this bill, especially that CCOs may join with local government to improve supervision. Many inmates can't get out of prison because they don't have housing. We need to have an Ombudsman. Educational programs help inmates become productive citizens. It is time to turn away from a "tough on crime" philosophy because it returns a high number of people to a life of crime. The counties appreciate the notice requirement, but there should be a housing incentive tied to the voucher and landlords should be allowed to inspect. The Community Transition Coordinating Networks are a good way to get people to talk about how to deal with these offenders. The DOC should be involved in the initial planning for housing and the IRP should assess the risk for homelessness.

(In support with concerns on original bill) The sanction provisions will cost the tax payers a lot of money. The bill represents a great step forward, but we need to focus more on pre-release planning for housing. There is a lack of differentiation in sanctions. The housing

exclusions will have the greatest impact on the mentally ill and homeless veterans. Do not remove the Oversight Committee.

(Concerns on original bill) The bill establishes a gross negligence standard for immunity for CCOs and this is too broad.

(Neutral) This vision doesn't match what is in the Governor's budget and there needs to be a single plan.

(Opposed) This bill asks taxpayers to absorb the costs and there is more risk of offenders returning to the community. There needs to be real sanctions for violations.

**Persons Testifying:** (In support on original bill) Senator Carrell, prime sponsor; Senator Regala; Harold Clarke, Department of Corrections; Ari Kohn, Post-Prison Education Program; Lee Newgent, Seattle Building Trades; Larry Fehr, Pioneer Human Services; Larry Saunders, Washington Association of Sheriff's and Police Chiefs; Beverly Disque and Jim Thorpe, Unity House; Carol Estes, Friends Community on Washington Public Policy; John Tierney; Ronald Ein, Transition and Re-entry Reform Coalition; Nina Harding; LeRoi Brashears, Washington Association of Churches; Sophia Byrd McSherry, Washington State Association of Counties; Tammy Fellin, Association of Washington Cities; Mike West, King County Department of Adult and Juvenile Detention; and Seth Dawson, Washington State Coalition for the Homeless.

(In support with concerns on original bill) Beth Colgan, Columbia Legal Services Institutions Project; and Ginger Richardson, Washington Federation of State Employees.

(Concerns on original bill) Larry Shannon, Washington State Trial Lawyers Association.

(Neutral) Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Jim Hines, Preserve Childhood Innocence.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Human Services. Signed by 20 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke and P. Sullivan.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Conway, Dunn, Hinkle, Kretz, McDonald, Priest and Seaquist.

**Staff:** Elisabeth Donner (786-7137).

## **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Human Services:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

### **Staff Summary of Public Testimony:**

(In support) We shared some disappointment in the scaling back of the housing piece but we recognize that this can be addressed in the budget and that it is a work in progress. In broad terms there are a number of parts to the bill that are important and still helpful and we ask that you advance the bill and work out the budgetary issues as it progresses. One example that is in the budget is that the offender's reentry plan should reference housing if that is needed and available. It is equally important for reducing recidivism and for the police to know where they are in case they re-offend. We hope you advance the legislation and keep it a work in progress for policy and budget. The Senate provided \$7 million for housing vouchers, which is a good thing.

We support the liability portion of this bill. The majority of the local government budgets are used for community safety. By keeping the liability provisions in the bill, it will allow our communities to be safer.

(Concerns) The New York Times editorial singled out Senate Bill 5070 as a far-sighted bill and a model for the nation in offender reentry programs. Today the New York Times would not recognize SB 5070 as it has become a weak bill encumbered by amendments. To restore effectiveness, we ask the Legislature to do four things: (1) Restore the housing provisions. Asking an offender to reintegrate while living under a bridge is a recipe for recidivism; (2) Reconsider the sanctions portion of the bill. As the language currently stands they undermine the purposes of the bill, are over broad and increase costs; (3) Restore the education loan provision. Post-secondary education is the single most effective way to reduce recidivism; and (4) Restore the Ombudsmen provision which will make reentry programs more effective and deflect costly law suits. The bill is about creating lives and will keep everyone safe.

(Opposed) Without major changes, particularly in transitional housing, we would be against the bill. We relied on the bill for sanctions and post-secondary education language that was in the Senate bill as it came over to the House. Transitional housing is an issue of community safety and protecting community members from victimization, and can't be more important. We request the Legislature to fund transitional housing at the \$7.6 million that is in the Senate budget, or the \$15 million that was in House Bill 1874 as an appropriation. Recidivism will not be reduced if transitional housing is not funded and provided.

We would be in favor of the bill if the housing portion was funded. Housing will cut crime and increase community safety. From 2003 to 2005 the Department of Corrections (DOC) housed 26 men at a cost of \$738,000. In 2005 DOC spent \$50,000 to house the same 26 men. The outcome two years later; 50 percent of the men successfully left supervision. Of those who remain on DOC supervision, 50 percent are in compliance with their supervision. Please provide the housing portion.

**Persons Testifying:** (In support) Tammy Fellin, Association of Washington Cities; and Seth Dawson, Washington State Coalition for the Homeless, Pioneer Human Services and National Association for the Mentally Ill Washington.

(Concerns) Ari Kohn, Post-Prison Education Program; and Carol Estes, Friends Committee on Washington Public Policy.

(Opposed) Jim Tharpe, Unity House.

**Persons Signed In To Testify But Not Testifying:** None.