

SENATE BILL REPORT

SB 6550

As Reported by Senate Committee On:
Human Services & Corrections, February 4, 2010
Ways & Means, February 9, 2010

Title: An act relating to imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

Brief Description: Imposing a sanction for offenders who violate sentence conditions by committing an assault against a law enforcement officer, employee of a law enforcement agency, or department of corrections employee.

Sponsors: Senators Hargrove, Regala, Carrell, Marr, Shin and Roach; by request of Department of Corrections.

Brief History:

Committee Activity: Human Services & Corrections: 2/02/10, 2/04/10 [DPS-WM].
Ways & Means: 2/09/10 [DPS(HSC)].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6550 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6550 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hewitt, Hobbs, Honeyford, Keiser, Kline, McDermott, Murray, Oemig, Parlette, Pflug, Pridemore, Regala, Rockefeller and Schoesler.

Staff: Richard Ramsey (786-7412)

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: The Governor convened a work group in late 2009/early 2010 to address how provisions of the law could be strengthened to address the tragedy of four officers killed in the Lakewood shooting. That work group recommended: the Department of Corrections (DOC) should pursue the authority for enhanced administrative penalties when an offender in community custody assaults a law enforcement officer or a community corrections officer.

Generally, an offender who violates the terms of his or her community custody may be sanctioned with up to sixty days confinement for each violation. If an offender was transferred to community custody in lieu of earned early release, the offender may be required to serve up to the remainder of his or her sentence. Alternatives to confinement, such as work release or electronic home monitoring, are authorized.

If an offender is subject to his or her third violation hearing and is found to have committed the violation, DOC must return the offender to total confinement to serve the remainder of his or her sentence. The Washington Court of Appeals - Division I recently found that this change from a discretionary sanction to a mandatory one violated the ex post facto clause as applied to offenders convicted prior to the effective date of the law (*State v. Madsen*, Dec. 14, 2009).

Summary of Bill (Recommended Substitute): An offender who violates any condition or requirement of a sentence by committing an assault against a law enforcement officer, employee of a law enforcement agency, or employee of the DOC must be sanctioned with up to one year in total confinement. Law enforcement officer is defined.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Language (up to) is added to allow a sanction less than one year.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):
PRO: We strongly support this bill. If a person is out on community custody and assaults a police officer, that is a good indication that they are not getting with the program. This remedy is in addition to any charges that may be brought criminally, but would provide a mechanism to keep the person in custody pending a determination. This mirrors what DOC does with offenders in prison when they assault an officer. They are able to remove the offender from the population in order to prevent more harm to staff and others.

OTHER: We have a concern as to whether this bill will withstand judicial scrutiny. This deals with a group of offenders who has mostly served their confinement time. These violation hearings now happen through an administrative law process where a person does not have the right to an attorney and does not require proof beyond reasonable doubt. This

bill does not distinguish between levels of assault and is not weighted against the sentencing grid in terms of proportionality to the type of assault. In summary, we are afraid that this is too little due process for too much time.

Persons Testifying (Human Services & Corrections): PRO: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Dianne Ashlock, Department of Corrections.

OTHER: Jean Soliz-Conklin, Sentencing Guidelines Commission.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: Offenders should be held to account for assaults on correctional officers. The penalty in this bill will be a realistic deterrent to offender-staff assaults. This bill is one of the recommendations of the Lakewood review. Folks subject to community supervision that assault policy just don't get it. This will be money well spent.

CON: If people commit a crime they should be charged. As written, this bill is a short cut to the criminal justice system. This bill will be subject to legal challenge and the state may incur costs associated with an adverse judgment. If there are 164 offenders the probable cost is more like \$5 million (assuming the average cost per offender).

This is a waste of public safety funding and it's recommended that judges be allowed to sanction offenders – where the sanction is not mandatory.

Persons Testifying (Ways & Means): PRO: Michael Boe, DOC, Monroe Correctional Complex; Nicky Geoghegan, DOC, Washington Corrections Center for Women; Clyde Wallingford, DOC, Washington State Penitentiary; Michael Beranbaum, Teamsters; Diane Ashlock, DOC; Don Pierce, Washington Association of Sheriffs and Police Chiefs.

CON: Bob Cooper, WA Defenders Association, WA Association of Criminal Defense Lawyers; Criminal Shankar Narayam, American Civil Liberties Union - WA.