

# SENATE BILL REPORT

## ESHB 1547

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As Reported by Senate Committee On:  
Human Services & Corrections, March 24, 2011

**Title:** An act relating to the deportation of criminal alien offenders.

**Brief Description:** Concerning the deportation of criminal alien offenders.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Darneille, Hunter, Dickerson, Cody, Hunt, Kagi, Sullivan and Kenney).

**Brief History:** Passed House: 3/02/11, 85-11.

**Committee Activity:** Human Services & Corrections: 3/22/11, 3/24/11 [DPA, w/oRec].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Baxter and Carrell.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Harper.

**Staff:** Shani Bauer (786-7468)

**Background:** Any alien offender who has been sentenced under the Sentencing Reform Act of 1981 and has been found by the U.S. Attorney General to be subject to a final order of deportation or exclusion may be placed on conditional release status. If placed on conditional release status, the offender is transferred to the custody of the Immigration and Customs Enforcement (ICE) division of the U.S. Department of Homeland Security.

An offender may not be released on a conditional release status unless the Secretary of the Department of Corrections finds that such a release is in the best interest of the state. Conditional release status may only be allowed with the approval of the sentencing court and the prosecuting attorney of the county of conviction.

If an offender is serving a sentence for a violent offense, sex offense, or for an offense that is a crime against a person, that offender may not be placed on conditional release status. Once an offender is turned over to ICE, the Department of Corrections (DOC) must issue a warrant for the offender's arrest within the United States which will remain in effect until the

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expiration of the conditional release. The unserved portion of an offender's term of confinement is tolled when the offender is released to ICE. If the offender is arrested, DOC must seek extradition as necessary and the offender must be returned to DOC for the completion of the unserved portion of his or her term of total confinement.

**Summary of Bill (Recommended Amendments):** The placement of an offender on conditional release status to ICE no longer requires the approval of the sentencing court and the prosecuting attorney or a determination by the Secretary of DOC that the conditional release is in the best interest of the state. No offender may be released unless ICE agrees that the alien offender will be detained in total confinement at an ICE facility pending the offender's return to the country of origin or other designated location.

An offender who is serving a sentence for an offense that is a crime against a person, but is not a violent or sex offender may be placed on conditional release status. Once an offender is transferred to ICE, DOC must issue an arrest warrant for the offender, which must remain in effect indefinitely. If an offender returns to the United States and is arrested, DOC may, but is not required to, seek extradition to have the offender returned to DOC.

These provisions apply to persons convicted before, on, or after the effective date of this section.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** An offender who is serving a sentence for a crime against person that is not a violent offense or sex offense may be conditionally released to ICE. A warrant for the arrest of an offender conditionally released to ICE must remain in effect indefinitely.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: This bill is part of the savings assumed in the Governor's budget. DOC attempted to work within the provisions of the current statute to conditionally release more offenders last year. DOC did not get a response from the majority of prosecuting attorney offices which would be required before a person could be conditionally released. The deportation process currently incorporates substantial notice provisions to the offender.

OTHER: Figuring out who is subject to deportation is not as straightforward as it may seem. The ICE process is subject to errors. There is no right to appointed counsel; and, therefore the parties must navigate the system on their own. Proposed amendment language would simply empower the judge to ensure that Padilla requirements have been complied with. It would require a five second colloquy between the judge and defense counsel. Parties are often pressured to sign a stipulated deportation order without knowing about their full rights.

Hundreds of people are erroneously deported. We believe this amendment is a good compromise. It would only affect offenders convicted after the effective date of the bill.

**Persons Testifying:** PRO: Scott Blonien, DOC.

OTHER: Jorge Baron, NW Immigrant Rights Project; Shankar Narayan, ACLU-WA; Toby Guerin, One America; Bob Cooper, WA Defender's Assn., WA Assn. of Criminal Defense Lawyers.