

SENATE BILL REPORT

SB 6369

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, February 6, 2020

Title: An act relating to individuals serving community custody terms.

Brief Description: Concerning individuals serving community custody terms.

Sponsors: Senators Nguyen, Darneille, Stanford, Das and Wilson, C.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/30/20, 2/06/20 [DPS-WM].

Brief Summary of First Substitute Bill

- Allows sanctions for low-level violations to be non-confinement sanctions when appropriate, or not more than three days in custody.
- Allows a person's sixth low-level violation to be considered a high level violation, subject to the Department of Corrections (DOC) policies and rules.
- Requires persons with underlying 21 offenses who commit new crimes to be released if the prosecuting attorney notifies DOC that new criminal charges will not be filed.
- Requires DOC to track and collect certain data on community custody violations and sanctions and submit an annual report to the Governor and Legislature.
- Requires DOC to contract with an independent third party to review and update the community corrections staffing model.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 6369 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

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.

Staff: Kelsey-anne Fung (786-7479)

Background: Swift and Certain. According to the Washington State Department of Corrections (DOC), the Legislature adopted the swift and certain (SAC) sanctioning model into law in 2012 in response to the continued economic downturn and the need to strategically cut costs without jeopardizing public safety. At the time, there was emerging research that SAC sanctioning programs increased compliance in the community and reduced costs associated with confining community violators. Basic principles of SAC are swiftness, certainty, proportionality, and fairness. Swiftness is achieved by the supervised individual's immediate arrest and confinement. Certainty is achieved by a clearly defined response applied for all violations. Proportionality is achieved by distinguishing low and high-level violations, identifying some behaviors as more serious than others, and by requiring the sixth and subsequent low-level violation result in a high-level response. Fairness is achieved by making the supervised individual aware of the rules and consequences, and by providing a consistent response for a defined set of violations.

Under SAC, an individual's first low level violation may be addressed with a stipulated agreement, unless a hearing process is required due to aggravated circumstances. Subsequent low-level violations, up to five, may be addressed through a short-term confinement sanction of one to three days in custody, unless a hearing process is required due to aggravated circumstances. After five low level violations, all violations will be considered high-level and addressed through a hearing process. A hearing process is a hearing with a DOC hearing officer. If the individual is found guilty, the individual will receive a sanction up to 30 days of confinement.

Aggravating factors include:

- escalating aggression;
- behavior during the commission of the violation that manifested deliberate harm, cruelty, or intimidation of the victim;
- physical resistance;
- posing a significant risk to public safety while failing to comply with electronic monitoring; and
- offense cycle behavior that indicates potential harm or threat or harm to a previous or potential victim.

High level violations include:

- sixth low level violation;
- low level violations with validated aggravating factor;
- weapons use or possession;
- contact with a prohibited business, location, or person;
- domestic violence related violation behavior;
- threatening or assaultive behavior towards employees or their families;
- search refusal;
- use of devices or adulterants to interfere with or alter the urinalysis process;
- unauthorized possession of ammunition or explosives;
- absconding from supervision;
- unapproved residence for a sex offender;
- failure to submit to a scheduled polygraph test;

- violation of the drug offender sentencing alternative; and
- any behavior resulting in a new misdemeanor, gross misdemeanor, or felony conviction for active underlying 21 designation cases.

According to DOC policy, in lieu of arrest or prior to the detaining facility assuming custody of the individual, the violation process may be mitigated with community corrections supervisor approval when the individual is enrolled or participating in a therapeutic court, or is known to have medical or mental health issues and confinement would interfere with stability in medications, inpatient substance use disorder treatment, other medical or mental health treatment, employment, or housing. If mitigated, the violation will be addressed through a stipulated agreement.

Underlying 21 Designation. Generally, an offender who commits a new crime is held in confinement for not more than three days. If the offender's underlying offense is one of the underlying 21 designation, or U21, and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires, for up to 30 days, or until a prosecuting attorney files new charges against the offender, whichever occurs first. The following felonies fall under the U21 designation:

- assault in the first degree;
- assault of a child in the first degree;
- assault of a child in the second degree;
- burglary in the first degree;
- child molestation in the first degree;
- commercial sexual abuse of a minor;
- dealing in depictions of a minor engaged in sexually explicit conduct;
- homicide by abuse;
- indecent liberties with forcible compulsion;
- indecent liberties with a person capable of consent;
- kidnapping in the first degree;
- murder in the first degree;
- murder in the second degree;
- promoting commercial sexual abuse of a minor;
- rape in the first degree;
- rape in the second degree;
- rape of a child in the first degree;
- rape of a child in the second degree;
- robbery in the first degree;
- sexual exploitation of a minor; and
- vehicular homicide while under the influence of intoxicating liquor or any drug.

The Department of Corrections' Proposal. In 2019, DOC proposed changes to SAC and U21 designation cases to the Sentencing Guidelines Commission and the Washington Criminal Sentencing Task Force. According to DOC, current policy requires an individual's sixth low-level violation to be considered high-level, regardless of the seriousness of the violation, the impact jail confinement will have on the individual's stability in the community, and the likelihood the sanction will prevent future violation behavior. The additional requirements for addressing violations that constitute new crimes by individuals on supervision for one of

the U21 offenses increase complexity for staff and require sanctions that are not based on the violation behavior.

DOC proposed changes to allow sanctions for low-level violations to be guided by the violation behavior and the individual's unique risk, needs, and responsivity factors rather than a rigid SAC count requirement. Staff will be able to identify the most appropriate response to target identified risk or need areas, limit disruption to prosocial activities and influences, address criminogenic need through meaningful and impactful sanction, and choose sanctions commensurate with the violation behavior.

Summary of Bill (First Substitute): DOC may sanction an offender who commits a low-level violation with one or more nonconfinement sanctions, or not more than three days in total confinement. A person's sixth low-level violation may be considered a high level violation, provided that any decision to elevate a violation complies with DOC's policies and rules. For persons with underlying 21 cases who commit new offenses while on community custody, such persons will be released if the prosecuting attorney notifies DOC that new criminal charges will not be filed. The changes to the law apply retroactively and prospectively regardless of the date of the offender's underlying crime.

DOC must track and collect certain data and information on community custody violations and imposed sanctions, including the number and types of high level and low-level violations, types of sanctions imposed, term lengths for confinement sanctions, and trends in rates of violations and rates of confinement. DOC must submit an annual report with a summary of the data and information to the Governor and Legislature beginning November 1, 2021.

Subject to appropriations, DOC must contract with an independent third party to provide a comprehensive review and develop an update of the community corrections staffing model. The updated model must include additional time and flexibility for community corrections officers to focus on case management, engagement, and interventions. DOC must submit a report to the Governor and Legislature by July 1, 2021.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Allows DOC to consider a person's sixth low level violation as a high level violation, subject to DOC policies and rulemaking.
- Restores language regarding specialized sanctions for persons with underlying 21 cases who commit new offenses while on community custody and adds language that such persons will be released if the prosecuting attorney notifies DOC that new criminal charges will not be filed.
- Requires DOC to track and collect data on community custody violations, imposed sanctions, and confinement lengths, including specified trends, and submit an annual report the Governor and Legislature beginning November 1, 2021.
- Requires DOC to contract with an independent third party to review and update the community corrections staffing model that includes additional time and flexibility for case management, engagement, and interventions, and submit a report to the Governor and Legislature by July 1, 2021.

- Clarifies that specified provisions of the act apply retroactively and prospectively regardless of the date of a person's underlying crime.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This legislation was requested by DOC and supported by SGC. It gives DOC direction to treat violations based on the seriousness of the individual's behavior and removes the automatic escalation after five violations. After DOC adopted SAC in 2012, while it brought consistency and expediency in how DOC addresses violations, it also brought unintended consequences. It lacked the context of supervision to support reentry and prosocial things, and not cause disruption and further setbacks like loss of housing or treatment. SAC is black and white and prevents DOC from trying meet the individual's needs and help them towards a behavioral change to be successful in the community. It reduces the incentive for a individual to continue to report and maintain a positive relationship with the community custody officer. A lot of violations are adjustments to adult life and learning life skills. This comes with errors and small things that DOC should not confine people for. However, this does not mean that DOC will stop prioritizing public safety; DOC will continue to distinguish between low and high level sanctions that will be met with accountability.

CON: Supportive of getting individuals back on track through successful reentry. When the Legislature adopted SAC, it relied on SAC being based on evidence-based science. Designating the sixth low-level violation as high-level was a fundamental piece to SAC. After looking at the data, most of the low-level violations do not appear to be common, minor errors that occur in life, but more legitimate concerns.

Persons Testifying: PRO: Senator Joe Nguyen, Prime Sponsor; Mac Pevey, Assistant Secretary–Community Corrections, Department of Corrections; Sarah Lewis, Community Corrections Officer, Department of Corrections; Lillian Wilbur, Community Corrections Officer, Department of Corrections.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.