

HOUSE BILL REPORT

HB 1126

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to limiting tolling of community custody terms.

Brief Description: Limiting tolling of community custody terms.

Sponsors: Representatives Goodman, Simmons, Ormsby and Davis; by request of Department of Corrections.

Brief History:

Committee Activity:

Public Safety: 1/22/21, 1/28/21 [DPS];
Appropriations: 2/9/21, 2/11/21 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Requires the Department of Corrections to toll a person's term of community custody for any time a secretary's warrant or bench warrant is issued and any time the person is incarcerated for the original sentence.
- Eliminates the requirement to toll a person's term of community custody for any time the person is absent from supervision, and eliminates the separate tolling requirements and exceptions for different categories of criminal offenses.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Klippert, Assistant Ranking Minority Member; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

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

Minority Report: Do not pass. Signed by 2 members: Representatives Graham and Griffey.

Minority Report: Without recommendation. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Young.

Staff: Corey Patton (786-7388).

Background:

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the Department of Corrections (DOC) following release from confinement in a state correctional facility. While on community custody, a person is subject to conditions imposed by the DOC and the sentencing court. The Secretary of the DOC may issue a warrant for the arrest of any person who violates a condition of community custody. A person who violates a condition of community custody may be subject to sanctions.

The DOC must toll a person's term of community custody for any time the person is absent from supervision without prior approval from the supervising entity.

If a person is serving a sentence for a sex offense, the DOC must toll the term of community custody for any time the person is in confinement for any reason. If a person is serving a sentence for any other type of offense, the DOC must toll the term of community custody for any time the person is in confinement, except for:

- the period of detainment prior to a hearing on an alleged violation of community custody conditions; or
- confinement time imposed as a sanction for violation of sentence conditions, if the sanction is not the imposition of the remaining sentence or the original sentence.

Summary of Substitute Bill:

The Department of Corrections (DOC) must toll a person's term of community custody, irrespective of the category of the underlying offense, for any time the person is:

- subject to a warrant issued by the Secretary of the DOC;
- subject to a bench warrant; or
- serving confinement time as part the original sentence, including confinement time imposed as a sanction from the remaining sentence; or
- serving confinement time as part of a subsequent felony conviction, including pre-sentence confinement.

The requirement to toll a person's term of community custody for any time the person is absent from supervision without prior approval from the supervising entity is eliminated.

The separate tolling requirements and exceptions for different categories of criminal offenses are eliminated.

Substitute Bill Compared to Original Bill:

The substitute bill requires the Department of Corrections to toll any term of community custody while the offender is confined for a subsequent felony conviction, including pre-sentence confinement.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 29, 2021.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Department of Corrections struggles to accurately calculate end dates for terms of community custody because the law governing tolling is complex. Corrections staff utilize a variety of sources, including electronic jail records and the Judicial Access Browser System, to manually calculate end dates because tolling information is not readily available through centralized data systems. This inevitably results in mathematical errors where some offenders are supervised for too long and some are not supervised for long enough. This bill eliminates most of these errors by simplifying tolling requirements. Clear and articulable end dates will provide better transparency and help ensure that any administrative resources saved by eliminating complexities in end-date calculations will be reinvested to provide better services, increased programming, and more effective supervision. This bill will likely reduce terms of community custody for some offenders and reduce caseloads for community corrections officers, but it should not affect the number of community corrections officers employed to supervise remaining caseloads.

(Opposed) Community custody should be tolled any time an offender is confined for a subsequent felony conviction, including any pre-sentence confinement. Community custody should also be tolled any time an offender is confined for a subsequent misdemeanor or gross misdemeanor conviction, although doing so may introduce some complexities. Recent changes to state law, such as the presumption of concurrent community custody, already provide offenders opportunities to combine or reduce terms of community custody. This bill further reduces terms of community custody for approximately 1,200 offenders, giving community corrections officers less time to affect positive change. Reducing community corrections officers' caseloads this drastically will result in job loss for corrections staff. It is inappropriate to force a choice between affording technology to accurately calculate tolling or having a sufficient workforce of

corrections staff.

(Other) Community corrections officers need sufficient time to affect positive change in their clients and reduce the risk of recidivism. Some treatment programs, such as treatment for domestic violence offenses, take a substantial amount of time to complete. This bill will hinder community corrections officers from having an opportunity to provide adequate supervision of their clients through lengthier treatment programs.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Stephen Sinclair and Mac Pevey, Department of Corrections.

(Opposed) James McMahan, Washington Association of Sheriffs & Police Chiefs; Matt Zuvich, Washington Federation of State Employees; Jon Tunheim, Thurston County Prosecuting Attorney; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Damon Brown, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 9 members: Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Dye, Harris, Hoff, Jacobsen, Schmick and Steele.

Minority Report: Without recommendation. Signed by 5 members: Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier and Rude.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Tolling information is not readily available through data systems, therefore manual calculation of scheduled end dates requires significant staff and resources. Sentence calculations are complex, and they change throughout a person's time while under the jurisdiction of the Department of Corrections. Short stays in incarceration create even more difficulties in calculating end release dates. In addition, the department cannot distinguish jail time related to felony convictions from other jail time. The policy change in this bill was a recommendation from the Sentencing Guidelines Commission and the Criminal Justice Task Force. This will help to simplify tolling and supervision times to provide greater clarity and transparency.

(Opposed) The problem with this bill is that it provides credit for a person being on community supervision when they are neither in the community nor on supervision. It is suggested that the bill be amended to continue to toll supervision while a person is incarcerated in jail for a new offense. In the addition, the savings from this bill should be used for reentry services to assist offenders in successfully reentering the community.

Furthermore, this bill reduces community corrections staff by 51 by the year 2027. Those assumptions are based upon a workload study done back in 2007. Most of these reductions will be record staff and we all have seen what happens when record staff are underfunded. It is suggested that an updated workload study be done considering the changes that have occurred over the last several years. There is concern that the cumulative impact of these collective changes through tolling will reduce the likelihood of reducing criminal behavior through programming.

Persons Testifying: (In support) Mac Pevey, Washington State Department of Corrections; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Opposed) James McMahan, Washington Association Sheriffs and Police Chiefs; and Ton Johnson, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.