

HOUSE BILL REPORT

HB 2178

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to establishing a pathway off lifetime community custody for individuals with sex offense convictions.

Brief Description: Establishing a pathway off lifetime community custody for individuals with sex offense convictions.

Sponsors: Representatives Goodman, Simmons and Doglio.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/16/24, 1/30/24 [DPS].

Brief Summary of Substitute Bill

- Provides a framework for the Indeterminate Sentence Review Board to discharge eligible persons with sex offense convictions from community custody after a specified number of years.
- Modifies the maximum term of community custody that a court must impose for a person with a Special Sex Offender Sentencing Alternative sentence.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

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.

Staff: Lena Langer (786-7192).

Background:

Indeterminate Sentence Review Board.

The Indeterminate Sentence Review Board (ISRB) is a quasi-judicial board established in the Department of Corrections (DOC) that has jurisdiction over persons who:

- committed crimes prior to July 1, 1984, and were sentenced to a state correctional facility;
- committed certain sex offenses on or after September 1, 2001; and
- committed crimes prior to their eighteenth birthday and were sentenced as adults.

For persons who committed certain sex offenses on or after September 1, 2001, in addition to the other terms of the sentence, the court must sentence the person to community custody under the supervision of the DOC and authority of the ISRB until the expiration of the maximum term of the sentence. Nearly all of these cases have lifetime community custody requirements upon their release from confinement.

Community Custody.

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the 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 a person who violates a condition of community custody. A person who violates a condition may be subject to sanctions.

End of Sentence Review Committee.

The End of Sentence Review Committee (ESRC), chaired by the DOC, classifies persons convicted of sex offenses being released from state correctional facilities according to their risk of reoffense within the community. The classifications are forwarded to the county sheriff in the jurisdiction where the person will reside.

In assigning risk levels, a person must be classified as:

- level I—if the person's risk assessment and other relevant factors indicate that the person is at a low risk to sexually reoffend within the community at large;
- level II—if the person's risk assessment and other relevant factors indicate that the person is at a moderate risk to sexually reoffend within the community at large; or
- level III—if the person's risk assessment and other relevant factors indicate that the person is at a high risk to sexually reoffend within the community at large.

Special Sex Offender Sentencing Alternative.

The Special Sex Offender Sentencing Alternative (SSOSA) is an alternative to standard sentencing wherein the court suspends a person's sentence in exchange for treatment and other conditions. A SSOSA sentence consists of a suspended standard range sentence,

incarceration for up to 12 months, treatment for up to five years, and a term of community custody. The term of community custody must be the length of the suspended sentence, the length of the maximum term imposed under the statute prescribing the sentencing for sex offenses, or three years, whichever is longer.

A person is eligible for a SSOSA sentence if:

- the person is convicted of a sex offense that is not a serious violent offense or Rape in the second degree;
- the person has no prior felony sex offenses;
- the person has no prior adult violent offenses within five years of the current offense;
- the current offense did not cause substantial bodily harm to the victim;
- the person had an established relationship or connection to the victim; and
- the standard sentence range for the current offense includes the possibility of incarceration for less than 11 years.

Summary of Substitute Bill:

Discharge from Community Custody.

Eligible persons who are recommended by the ESRC as level I upon their release from confinement must be discharged from community custody five years after their release from confinement if they have not committed a "temporary disqualifying event." The ISRB must review the person's records to determine eligibility and discharge the person from community custody if the criteria is met. The ISRB may hold a hearing to determine if the person may be discharged from community custody. If the ISRB finds that the person does not meet the criteria to be discharged from community custody, the ISRB may order community custody to continue for up to 60 months before the person may be reviewed again for discharge.

Persons who are recommended by the ESRC as level II may be eligible for discharge from community custody 10 years after their release from confinement if they have not committed a "temporary disqualifying event." The ISRB must determine if the person qualifies for discharge from community custody and hold a review hearing at least 120 days before the potential end of the community custody period. If a "temporary disqualifying event" occurs within the last five years of the first 10 years from release, the person will not be eligible for discharge from community custody for at least three years after the initial 10 years have concluded. The ISRB must hold a review hearing at least 120 days prior to the person's new potential discharge date.

Persons who are recommended by the ESRC as level III may be eligible for discharge from community custody 15 years after their release from confinement if they have not committed a "temporary disqualifying event." The ISRB must determine if the person qualifies for discharge from community custody and hold a review hearing at least 120 days before the potential end of the community custody period. If a "temporary disqualifying

event" occurs within the last five years of the first 15 years from release, the person will not be eligible for discharge from community custody for at least five years after the initial 15 years have concluded. The ISRB must hold a review hearing at least 120 days prior to the person's new potential discharge date.

The ISRB must consider any input from community corrections officers, parole or probation officers, or law enforcement during the review to determine whether a person recommended as level I, II, or III qualifies for discharge from community custody. For persons recommended by the ESRC as level II or III, before the reviewing hearing to determine if the person qualifies for discharge from community custody, the ISRB must conduct an examination of the person using methodologies that are recognized by experts in the prediction of sexual dangerousness. If the ISRB determines that a person recommended by the ESRC as level II or III is not eligible for discharge from community custody after the initial and potential subsequent reviews as outlined, the ISRB may order community custody to continue for up to 60 months before the person may be reviewed again for discharge.

A temporary disqualifying event occurs when the person:

- has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing;
- has been convicted of any new felony offense or any misdemeanor sex offense;
- has not completed all recommended treatment as required, however the ISRB may waive this condition if there is a finding that the person did not complete all recommended treatment due to the person's indigence;
- has been found to be noncompliant with conditions of community custody on a repeated basis; or
- has been assessed to be at significant risk for sexual recidivism on a risk assessment completed within 120 days of eligibility for discharge.

"Discharge from community custody" is defined to mean that a person is no longer under the supervision of the DOC or the ISRB, unless a required return to community custody occurs before the statutory maximum of the crime of conviction. Discharge from community custody may not impede the restoration of civil rights, count as probation, or terminate the jurisdiction of the ISRB. Discharge from community custody may not impact a person's duty to register or community notification requirements.

"Return to community custody" is defined to mean that the ISRB resumes community custody of a person due to a conviction for a crime reasonably related to the crime which placed the person under the jurisdiction of the ISRB, risk of reoffense, or community safety.

To be eligible for discharge from community custody, a person must not engage in risk-relevant behaviors related to the crime of conviction, risk of reoffense, or risk to community safety within a reasonable timeframe to the person's potential date to be discharged from community custody.

Special Sex Offender Sentencing Alternative.

For a person granted a SSOSA, the court must impose a term of community custody that is the length of the suspended sentence or three years, whichever is longer. The sentencing court must schedule a supervision termination hearing within the last 60 days of the presumed expiration of community custody to determine if the person should be released from community custody.

Annual Report and Implementation.

Beginning December 1, 2024, the DOC and the ISRB must submit an annual report to the Governor and the Legislature that includes:

- the number of persons eligible for discharge from lifetime community custody;
- the number of persons granted discharge from lifetime community custody; and
- the number of persons who, subsequent to discharge from lifetime community custody, are investigated for a recent overt act or new sex offense.

The DOC and the ISRB have discretion to implement the review process for discharging eligible persons from community custody over a period of not more than 12 months following the act's effective date.

Substitute Bill Compared to Original Bill:

The substitute bill:

- requires the ISRB, rather than the DOC, to determine if a person who is recommended as risk level I is eligible for discharge from community custody five years after the person's release from confinement;
- requires the ISRB, during its review to determine whether a person qualifies for discharge from community custody, to consider any input from community corrections officers, parole or probation officers, or law enforcement;
- adds that, if the ISRB determines that a person is not eligible to be discharged from community custody, the ISRB may order community custody continue for up to 60 months before another review for possible discharge;
- provides that, in determining whether a person recommended as level II or III qualifies for discharge from community custody, the ISRB may extend the period of community custody if the ISRB determines that the person has recently engaged in behaviors that are related to the crime of conviction, risk of reoffense, or a risk to community safety;
- requires the ISRB, before the review hearing to determine if a person recommended as level II or III qualifies for discharge from community custody, to conduct an examination of the person using methodologies that are recognized by experts in the prediction of sexual dangerousness;
- defines "discharge from community custody" to mean that the person is no longer under the supervision of the DOC or the ISRB unless a required return to community custody occurs before the statutory maximum of the crime of conviction;

- defines "return to community custody" to mean that the ISRB resumes community custody of a person due to a conviction for a crime reasonably related to the crime which placed the person under the ISRB's jurisdiction, risk of reoffense, or community safety;
- provides that, to be eligible for discharge from community custody, a person must not engage in risk-relevant behaviors related to the crime of conviction, risk of reoffense, or risk to community safety within a reasonable timeframe to the person's eligibility to be discharged from community custody;
- changes the term "disqualifying event" to "temporary disqualifying event;"
- requires the ISRB, in addition to the DOC, to submit an annual report to the Governor and the Legislature; and
- provides that the DOC and the ISRB have discretion to implement the review process for discharging eligible persons from community custody for up to 12 months following the act's effective date.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 31, 2024.

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) This bill is the product of a project mandated by the Legislature. This solution was crafted after many stakeholders and those with lived experience provided input. The bill does not guarantee that anyone will be removed from community custody. The ISRB has the infrastructure in place to conduct the review hearings outlined in the bill. The ISRB will make the final decisions for the individuals ranked as risk level II or III. The shame associated with sex offenses is incredibly high. The bill provides hope and incentive to individuals. The risk level determinations are not based on specific offenses, but are individualized based on the person. This bill creates a pathway off lifetime community custody for individuals with convictions of sex offenses. Risk associated with sexual recidivism does not last forever because people change over their lifetime. Research involving thousands of cases has demonstrated that risk for reoffending predictably declines the longer people remain offense free in the community. Even the highest risk cases eventually become very low risk for sexually reoffending. This bill helps address laws that have had unintended consequences on marginalized communities. Juveniles who are convicted of sex offenses are held hostage for life with lifetime supervision.

Lifetime supervision creates many barriers. Lifetime supervision is not evidence based. The onerous conditions of community custody affect the families of the people that are subject to the conditions. Lifetime supervision has led young and older persons alike with

sex offense convictions to have feelings of hopelessness that they will never be done, even after completing treatment and successfully reentering into the community. A person's completions, successes, and experiences after many years do not have any effect on a person's community custody conditions. After many years, a person may get assigned a new community corrections officer to manage their case, which creates additional hurdles.

(Opposed) There are questions about why someone who is recommended as a risk level III would not be required to reclassify his or her risk level before they are eligible for relief from community custody. It is significantly concerning that persons who are risk level II and level III may be eligible for discharge from community custody.

(Other) The Washington Association of Sheriffs and Police Chiefs voted in favor of this recommendation as it went through the Sex Offender Policy Board. There should be a way that a person can earn their way out of community custody. Rather than terminating supervision, language in the bill should provide that a person goes to inactive status of community custody. Further, there is no process for input from law enforcement or victims in the review process in the bill. There are some changes that need to be made to the bill.

Persons Testifying: (In support) Representative Roger Goodman, prime sponsor; Whitney Hunt and Brad Meryhew, Sex Offender Policy Board; Larry Jefferson, Washington State Office of Public Defense; Karl Hanson, Society for the Advancement of Actuarial Risk Need Assessment; Amber Vlangas, Restorative Action Alliance; Petra Gardenhire; Julie Crest; Louis Ihrig; and Mike LeBeau.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: David Ashworth; Sonja Hardenbrook, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Kecia Rongen and Corey McNally, Indeterminate Sentence Review Board.