

***Legislative Task Force on Community Custody and
Community Supervision***

***Report and Recommendations
To the Legislature***

November 15, 2007

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***Joint Task Force on Offenders
Programs, Sentencing & Supervision***

Report and Recommendations to the Legislature

Table of Contents

Introduction	4
Background.....	5
Task Force Process.....	6
Task Force Recommendations to the Legislature.....	6
Issues Needing Further Exploration.....	9

Introduction

Approximately 8,500 offenders return to the community from Washington prisons each year. As discussed in depth last year, the effective reentry of those offenders back into the community is of vital importance in ensuring community safety. An important piece of that reentry is holding those offenders accountable through community custody and supervision.

I was honored to be asked to chair the Task Force on Community Custody and Community Supervision. The Task Force worked diligently to come up with recommendations regarding highly complex issues. Although we wish we had more time to explore these issues, we feel we have made a positive start in improving public safety.

This report contains a list of issues the group identified as needing further discussion. It is our fervent hope that the Governor and the Legislature will continue to promote discussions on these topics and continue to improve community supervision in the state of Washington.

Representative Ida Ballasiotes, Chair

Background

In 2007, the Washington State Legislature passed ESSB 6157 (Chapter 267, Laws of 2006). In addition to addressing many items related to the reentry of offenders into the community after release, the bill created a Legislative Task Force on Community Custody and Community Supervision to review the laws related to community custody and community supervision and make recommendations to the Legislature and the Governor.

The motivation for the task force was driven by recommendations from Scott Taylor with the National Institute for Corrections. Last year, a review of the Department of Corrections Community Supervision Division was conducted by the National Institute for Corrections following the tragic deaths of three law enforcement officers caused by offenders under community supervision. One issue of concern raised by the review was that “a legislative history has created a maze of statutes that staff and the court system must be aware of and continuously manage.” The report recommended “developing a team of the courts, legislature and the DOC to review the many statutes enforced, with the goals of reducing the number of conflicting statutes and of updating outdated statutes.”

In response to this recommendation, the Legislature directed the task force to:

- 1) Review and analyze all statutes of the Revised Code of Washington related to community custody and community supervision of offenders;
- 2) Make specific recommendations, if any, related to sentencing laws that would allow the DOC and its CCOs to more easily identify statutory requirements associated with an offender's sentence;
- 3) Make specific recommendations, if any related to community custody and community supervision laws that would allow the DOC and its CCOs to more easily identify statutory requirements associated with an offender's term of community custody or supervision;
- 4) Make specific recommendations, if any, related to the statutory requirements of the violation hearing process that would enable the DOC and its CCOs to respond to an offender's behavior by imposing appropriate and timely sanctions where necessary;
- 5) Make specific recommendations related to definitions and language used in the statutes which would make the statutes easily readable and unambiguous; and
- 6) Receive input from the public and interested stakeholders to assist in making suggested changes.

However, the task force felt it necessary to discuss issues more broadly associated with community supervision than was outlined in the legislation and these discussions are reflected in this summary report.

Task Force Procedure

The Task Force conducted four meetings from July 30, 2007, through September 26, 2007. The group heard presentations from the Washington State Institute for Public Policy, DOC field supervisors, and Scott Taylor, from the National Institute of Corrections. At the final meeting, the task force discussed final recommendations and agreed to further comment on written recommendations by email. The recommendations contained in this report reflect the majority of the Task Force members. Items where consensus was not reached are noted in this report.

The task force had open and full discussions and identified many issues worthy of further exploration. While the group acknowledged that it did not have time to fully develop recommendations regarding all these issues, the issues are set out in the report. The Task Force recommends these issues continue to be explored in the future.

Task Force Recommendations

1. SUPERVISION

- a. The DOC must emphasize the importance of more specific and appropriate supervision for offenders. CCOs must be encouraged to engage in significantly more field contacts than what is current practice. The DOC should develop Field Contact Standards which include greater time in the field and increased face-to-face contact with offenders.**
- b. In order to enable CCOs to spend more time in the field, the Legislature should provide funding to add administrative support staff to assist CCOs in completing the significant amount of paperwork for which CCOs are currently responsible and/or allow the DOC to utilize greater technology to assist CCOs in conducting their duties more effectively.**
- c. The DOC, AOC, and law enforcement should collaborate to develop alternative methods to serve warrants on offenders who violate the terms of their supervision rather than relying solely on law enforcement to serve all warrants. The increase in the warrant service may increase the numbers of offenders who will need to be incarcerated; therefore, the DOC should consider alternative options for short term incarceration.**

The Task Force discussed many issues surrounding the time constraints experienced by CCOs. The group heard that practices of officers may vary around the state depending on the demands of the particular region and philosophy of the field supervisor. The Department has recently implemented an expectation that CCOs make a home visit within 10 days of an offender entering the community. Concern was expressed that CCOs may be spending too much time completing paperwork and not enough time in the field. However, some members caution against setting a mandatory number of contacts.

The DOC and CCO's need to be focused on both the purpose of a contact and the results/outcomes of each contact rather than a specific number.

The group acknowledged that ESSB 6157 requires the DOC to complete a CCO workload study and looks forward to those results. Notwithstanding, in order to enhance public safety, the group felt that it was imperative that CCOs be encouraged to spend more time in the field and have greater face to face contact with the offenders that they supervise.

The DOC is encouraged to seek methods for more efficiently using the CCOs time to accomplish these purposes either through the use of administrative support staff or greater technology. Likewise, the legislature should fund those efforts. However, it should be noted that there is a tension between what is administrative paper work versus what is work needed to fully understand the file of a particular offender under community supervision.

It was noted that one of the keys to holding offenders accountable is the application of immediate and consistent consequences. When an offender does not show up for a scheduled meeting, a warrant is issued for the offender. However, there does not appear to be any consistent method for prioritizing warrants and it may sit there for some time without an arrest being made. The group believes that there must be more emphasis on service of warrants if these offenders are to be held accountable.

2. JUDICIAL DISCRETION

Superior court judges should be given the discretion to impose or not impose supervision for crimes other than violent crimes, serious violent crimes, and sex offenses. In order to assist judges with this decision-making, pre-sentence reports should be made available to the court along with a risk assessment of the offender.

Task force participants expressed frustration that superior court judges do not have the discretion to order supervision or assign conditions of supervision in some circumstances. Further, supervision or conditions of supervision may be ordered by the court but not enforced by the DOC because of statutory prohibitions.

The group noted that the Sentencing Reform Act is out of sync with current practice in some situations. If an offender is assessed as being a risk management level C or D, the DOC is not authorized by law to actively supervise that offender, even though other sections of the SRA may require the court to order a period of community custody.

The superior court judges believe they can do a better job of targeting repeat offenders for needed supervision and treatment and should be given the discretion to do so when the crime is other than a violent crime, serious violent crime, or sex offense.

The DOC cautions that this recommendation may result in a large fiscal impact if low risk offenders are to be placed on more active supervision. It also points out that national research tells us that many low risk offenders will do just as well or better without

supervision. *See The Washington Institute for Public Policy Report: Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates, 2006 October.* Steve Aos, Marna Miller, Elizabeth Drake. #06-10-1201. This recommendation therefore does not reflect a consensus of the group.

3. STATE IMMUNITY FOR COMMUNITY CORRECTIONS ACTIVITIES

Provide liability protection in legislation that would allow CCOs and field supervisors to make decisions based on the individual behavior of offenders rather than the fear of liability.

The Task Force had significant discussion about the lack of liability protection for supervision activities and the impact this has had on how offenders are supervised. Two main impacts were discussed.

First, the group heard from Scott Taylor of the National Institute of Corrections that offender accountability plans are less specific and may not contain all conditions that would be beneficial for an offender on supervision. For example, the plan may not state a specific number of face to face contacts that are required per week because the CCO may not be able to accomplish those contacts. He explained that unanticipated situations may disrupt the officer's schedule so that they are unable to ensure that a face to face contact is made. If an incident occurs with that offender, liability may result. The Department can avoid this liability by not specifying the number of contacts.

Second, the CCOs felt they could better respond to the behavior of an individual offender if they had more discretion. Currently, officers believe that they are overly limited to a narrowly defined group of choices and often feel that they must choose the most stringent penalty available. Jail time may further destabilize an offender on supervision (resulting in a loss of housing or employment), but in order to avoid potential liability, the CCO will opt for the penalty that includes jail time. With some liability protection, the CCO could choose the option they felt was the most likely to get the best response from the offender.

Two mechanisms for instituting liability protection for community correction officers were discussed:

- a. Give the state the same liability protection as the counties for supervision and community custody activities. Currently, counties are immune from liability for civil damages resulting from any act or omission in the provision of supervision or community custody unless the act or omission constitutes gross negligence.
- b. Provide immunity from liability for civil damages resulting from the exercise of judgment and discretion by CCOs and their supervisors in applying law and policy related to supervision and community custody to the facts of an individual case.

Issues Needing Further Exploration

1. Workload Study

ESSB 6157 requires the DOC to conduct an updated community corrections workload study and report the results of that study to the governor and the legislature. The report is anticipated to be completed in November of 2008.¹ This group anticipates that study will provide guidance in structuring CCO time for better public safety.

2. Neighborhood corrections initiatives and partnership policies should be further explored and expanded.

The group heard from several participants that partnership and collaboration between community corrections and law enforcement have been beneficial in monitoring offenders. ESSB 6157 encourages the DOC and the counties to work on these types of partnerships.

3. Ability to merge conditions of multiple sentences.

An offender may have multiple sentences for which he or she is on community custody. Each term of community custody may contain different conditions of supervision which may or may not conflict with each other. There should be some way to merge the sentences so that the CCO only has one set of conditions to enforce.

4. Develop measures to focus on supervision outcomes.

5. Treatment for offenders on supervision should utilize effective programs and be immediately accessible.

The Washington State Institute for Public Policy has stated that supervision alone is not effective in reducing recidivism. On the other hand, treatment programs in the community can be very effective in reducing recidivism. In order to be as effective as possible in improving public safety, supervision should be coupled with immediate and effective treatment whenever possible.

6. The DOC should have the statutory authority to pay for housing.

Upon legal advice, the DOC has discontinued providing transitional housing funding to high risk offenders reentering the community. Studies show that offenders are less likely to reoffend when they have stability, including housing and employment.

However, ESSB 6157 establishes a pilot program with grants to local providers for transitional housing for high risk offenders to be administered by the Department of

¹ Section 307 of ESSB 6157 requires the study to be completed by November of 2007, however, section 703 does not provide funding for the study until 2008-09. In light of this conflict, the DOC has stated they will complete the report in November 2008.

Community, Trade, and Economic Development (CTED). CTED manages the state's housing assistance programs and has the expertise in working with housing providers. The grants are anticipated to be awarded in January 2008. Lessons learned from these pilots will be instructive for future housing assistance initiatives for offenders returning to their communities.

7. The statutory provisions for the types and conditions of supervision should be simplified.

CCOs have approximately 36 different types of supervision along with relating conditions that they must be aware of. This adds to the workload of the CCOs and takes them off the real focus of monitoring the offender.

The Sentencing Guidelines Commission is currently working on a project to simplify the supervision provisions of the Sentencing Reform Act. The Task Force is in complete support of this project and urges the legislature to adopt legislation accomplishing the goal of simplification.

8. The statute governing who the DOC may and may not supervise is inconsistent with court authority to order supervision.

A Superior Court Judge may order conditions of supervision as part of an offender's sentence. Notwithstanding, RCW 9.94A.501 provides that the DOC may not supervise an offender who is assessed in one of the two lowest risk categories. As currently interpreted and invoked, this statute trumps any sentence imposed by a Superior Court Judge.

9. Greater clarity is needed with respect to the manner in which earned release is administered.

Current statutes authorize an offender to earn up to 50% off his or her sentence. While an offender in confinement does not have a protected liberty interest in earning the maximum percentage of earned release time, the Washington Court of Appeals has held that an offender has some due process rights in the determination of his or her release date. Further, the Thurston County Superior Court recently held the DOC civilly liable for holding an offender past her lawful release date due to the miscalculation of her earned release time.

These and other factors have lead to a policy at the DOC of starting every offender with the maximum amount of earned release possible and reducing the amount based on factors such as infractions and failure to participate in programming (as opposed to starting every offender with no earned release time and increasing the amount based on factors such as good behavior and participation in programming). This policy, coupled with factors such as up to six months of work release and credit for time served, has lead, in some cases, to offenders spending little or no time behind bars. This situation should be examined more closely in light of a policy favoring truth in sentencing.