

# HOUSE BILL REPORT

## ESSB 5288

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**As Reported by House Committee On:**  
Human Services

**Title:** An act relating to the supervision of offenders.

**Brief Description:** Changing provisions regarding supervision of offenders.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala and Shin).

**Brief History:**

**Committee Activity:**

Human Services: 3/4/09, 3/26/09 [DPA].

**Brief Summary of Engrossed Substitute Bill  
(As Amended by House)**

- Revises the scheme under which the Department of Corrections (DOC) supervises offenders.
- Requires the DOC to supervise certain offenders convicted in superior court of fourth degree Assault or Domestic Violation of a No Contact Order and offenders convicted of certain nonfelony sex-related offenses.
- Removes the requirement that the DOC supervise a felony offender whose risk assessment places them in a category of low or moderate risk.
- Requires the DOC to assess the risk of an offender by using a "static" risk assessment tool developed by the Washington State Institute for Public Policy.
- Allows the DOC to terminate supervision after six months for a moderate or low risk offender if, at that time, the offender is still assessed as moderate or low risk.
- Permits superior courts to impose conditions of probation and county supervision for offenders convicted of misdemeanor and gross misdemeanor offenses if the county where the offender is sentenced has authorized a misdemeanant probation program.
- Applies the new scheme of supervision retroactively and prospectively.

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*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.*

- Repeals RCW 9.95.206, 9.95.212, and 2008 c 231 s 60 (uncodified).

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## HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Dammeier, Ranking Minority Member; Green, Morrell and O'Brien.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orwall, Vice Chair; Klippert and Walsh.

**Staff:** Linda Merelle (786-7092)

### **Background:**

#### Offender Accountability Act.

In 1999 the Legislature passed the Offender Accountability Act (Engrossed Second Substitute Senate Bill 5421). The Offender Accountability Act (OAA) extended community custody to all sex offenses, all crimes against persons, and all felony drug offenses. It required the Department of Corrections (DOC) to use a validated risk assessment and to supervise offenders according to their risk level. In 2003 the Legislature restricted the types of offenders that the DOC could supervise and increased the earned release time for certain offenders from one-third to 50 percent of their sentences.

#### Risk Assessment.

One purpose of the OAA is to reduce the risk of reoffense in the community. Under the OAA, the DOC is required to classify and supervise offenders according to their risk for recidivism. As a part of the OAA, the Washington State Institute for Public Policy (WSIPP) was directed to study the impact of the OAA on recidivism. In 2003 the WSIPP analyzed the validity of the DOC's risk assessment tool, the Level of Service Inventory-Revised (LSI-R). The LSI-R is a 54 question survey which includes "static" and "dynamic" risk factors. A static risk factor is a factor that cannot decrease, such as an offender's criminal history. A "dynamic" risk factor can decrease through intervention, such as an offender's drug dependency. In its analysis of the LSI-R, the WSIPP determined how the predictive accuracy of the LSI-R could be strengthened by including more static risk information about an offender's prior record of offenses. The WSIPP developed a new tool for risk assessment which would have increased accuracy for predicting reoffense.

In approximately August 2008, the DOC began using the new static risk assessment tool to assign a probability of a subsequent conviction based upon the criminal history, age, and gender of Washington offenders. Instead of the risk categories of the LSI-R (A, B, C, and D, with A being the highest risk), the new tool identified the risk categories of: (1) high risk/violent; (2) high risk/nonviolent; (3) moderate risk; and (4) low risk.

Currently, the DOC must supervise any offender who has been sentenced to community custody if (1) the risk assessment tool places the offender in one of the two highest risk categories or (2) if the offender meets one of the following conviction criteria for either a current offense, a prior offense, or a special sentencing condition or status.

<i>Current Offense</i>	<i>Prior Conviction</i>	<i>Special Sentencing Conditions or Status</i>
Sex Offense	Sex Offense	Condition of offender's supervision includes chemical dependency treatment, including the Drug Offender Sentencing Alternative (DOSA).
Violent Offense	Violent Offense	Offender was sentenced pursuant to a First Time Offender Waiver (FTOW).
Crime against persons (does not include fourth degree Assault)	Crime against persons (does not include fourth degree Assault)	Offender was sentenced to a Special Sex Offender Sentencing Alternative (SSOSA).
Residential Burglary	Residential Burglary	Supervision is required by the Interstate Compact for Adult Offender Supervision.
Manufacture, Delivery, or Possession of Methamphetamine	Manufacture, Delivery, or Possession of Methamphetamine	
Delivery of a Controlled Substance to a Minor	Delivery of a Controlled Substance to a Minor	

The DOC must supervise every offender sentenced by a superior court to probation for a misdemeanor or gross misdemeanor. The DOC is prohibited from supervision any offender who does not fall within one of the above categories.

**Summary of Amended Bill:**

The DOC must supervise all offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) under the new tool developed by the WSIPP and offenders who meet other criteria as described below:

<i>Two Highest Risk Categories</i>	<i>Regardless of Risk</i>	<i>Offenders sentenced to Probation for Misdemeanor/Gross Misdemeanor Offenses</i>
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All offenders sentenced to community custody whose risk assessment places them in either the high risk/violent or high risk/nonviolent category regardless of offense.	Felony sex offenders, except those sentenced to community custody only for failure to register as a sex offender.	Offenders convicted of: fourth degree Assault <b>or</b> Domestic Violence Violation of No Contact Order; <b>and</b> a prior conviction for: (i) violent offense; (ii) sex offense; (iii) crime against person; (iv) fourth degree Assault; <b>or</b> (v) Domestic Violence Violation of No Contact Order.
	All dangerous mentally ill offenders.	Offenders convicted of: (i) second degree Sexual Misconduct with a Minor; (ii) second degree Custodial Sexual Misconduct; <b>or</b> (iii) Communication with a Minor for Immoral Purposes.
	All offenders with an indeterminate sentence.	
	All offenders sentenced to DOSA, SSOSA, and FTOW.	
	All offenders required to be supervised under the Interstate Compact for Adult Offender Supervision.	

The DOC will not supervise any offenders assessed as a low or moderate risk.

Misdemeanor and Gross Misdemeanor Offenses.

The DOC must supervise offenders sentenced in superior court for fourth degree Assault or Domestic Violence Violation of a No Contact Order if the offender has a prior conviction as outlined in the above table. The DOC must also supervise offenders sentenced in superior court for certain misdemeanor or gross misdemeanor offenses, as demonstrated in the table above.

Under this bill, a county legislative authority may authorize a probation program for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and who may be sentenced to probation by a superior court. If authorized by the county, a superior court may sentence an offender convicted of a misdemeanor or gross misdemeanor to probation. Neither Washington nor the county are

liable for any harm caused by the actions of an offender sentenced by the superior court to misdemeanor probation but who is not being supervised pursuant to a duly authorized superior court misdemeanor probation program. Washington, the relevant county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any act or omission in rendering probation services unless the act or omission constitutes gross negligence.

Retroactive Application.

This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the DOC, currently incarcerated, or sentenced after the effective date of the act.

Repealed Statutes.

Under this bill, 9.95.206 RCW, 9.95.212 RCW, and 2008 c 231 s 60 (uncodified) are repealed.

Emergency Clause.

Sections 1, 4 - 8, 10, 11, and 14 are subject to an emergency clause.

Expiration Dates.

Section 1 of the act expires on August 1, 2009.

**Amended Bill Compared to Original Bill:**

The DOC must supervise misdemeanor and gross misdemeanor offenders sentenced in superior court for fourth degree Assault, Domestic Violence Violation of a No Contact Order, and certain sex-related offenses for which registration is required.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 4 - 8, 10, 11, and 14, relating to categories of offenders for Department of Corrections supervision, supervision of misdemeanants, and retroactivity, which contain an emergency clause and take effect immediately; and sections 2, 3, and 9, relating to categories of offenders for Department of Corrections supervision, risk assessment, and the expiration of provisions passed in 2003, which take effect August 1, 2009.

**Staff Summary of Public Testimony:**

(In support) Public safety is a big issue, and there is a very large budget issue to deal with. Regarding the new assessment tool, when the researchers looked at the supervision scheme, they looked at over 70,000 cases. It took a couple of years to determine a likelihood of supervision. For the level of supervision, we were not getting anything out of it. Initially, we started with a bill that had no supervision for offenders whose risk level was determined to be low or moderate. Having six months of supervision would give those offenders an opportunity to violate. Multiple violations would increase the risk offense level. In the Governor's budget, the suggestion was to reduce the supervision of misdemeanors and some low risk offenders and a reduction of an overall length of supervision. The reduction of the length of supervision is not in the bill. Money is primarily saved by laying off staff. No one with a current conviction for a sex offense will escape supervision.

(In support with concerns) This measure will have some level of an adverse impact on community safety. This bill is not going to get us where we want to go. If we make further cuts, the supervision of low and moderate offenders would be the place to make those cuts. It is not clear whether the level of supervision of misdemeanors has had a marked impact. The question is "which cuts are going to do the least damage?" The supervision of low and moderate risk offenders does not ever involve a face-to-face contact and is not effective. It should be eliminated. The supervision of misdemeanor offenders out of superior court is a big chunk of the savings in the bill. We may want to look at the length of community custody, but not at increased earned release time or to remove incentives to do treatment programs.

(With concerns) Under the provisions of this bill, the courts will leverage supervision by requiring chemical treatment as a condition which would displace those who really need treatment.

(Opposed) Prosecutors are concerned about the lack of the accountability under this bill. This bill would not recognize the nature of sex offenders. We should take time to look at the new assessment tool to see how it works. Let's not lose all of the ground gained regarding community safety and sex offenders. The static risk assessment tool is not accurate in assessing all offenders. It contradicts what we know about sex offenders. Sex offenders and domestic violence offenders affect victims more strongly than other kinds of offenders. This bill could harm community safety. We are making legislation of a tool that is only 50 percent accurate. It has only been used since August of 2008. It is scoring on an automated system. This is not smart legislation. Good supervision of low or moderate offenders is effective. We have no faith that the assessment tool is scoring properly. Maybe hand scoring would make a difference.

(Information only) There is not a problem with the scoring on the new assessment tool. This tool was rolled out after a long development. It is an aggregate tool. There is nothing out there that is any better.

**Persons Testifying:** (In support) Senator Hargrove, prime sponsor; Eldon Vail, Department of Corrections; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(In support with concerns) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Victoria Roberts, Department of Social and Health Services, Division of Alcohol and Substance Abuse.

(Opposed) Megan Allen and Lindsay Palmer, King County Sexual Assault Resource Center; and Dana Hufford, Cindy McHie, Judith Lang, and Ginger Richardson, Washington Federation of State Employees.

(Information Only) Eldon Vail, Department of Corrections.

**Persons Signed In To Testify But Not Testifying:** None.