

# HOUSE BILL REPORT

## ESHB 2303

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### As Passed Legislature

**Title:** An act relating to modification of conditions of community custody.

**Brief Description:** Modifying conditions of community custody.

**Sponsors:** House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons and Peterson).

#### **Brief History:**

##### **Committee Activity:**

Community Safety, Justice, & Reentry: 1/16/24, 1/29/24 [DPS].

##### **Floor Activity:**

Passed House: 2/13/24, 58-39.

Passed Senate: 2/28/24, 38-11.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Modifies the criteria by which the Indeterminate Sentence Review Board (ISRB) may modify or impose additional conditions of community custody to clarify that the conditions may be based on the person's crime of conviction, risk of reoffense, or risk to community safety.
- Provides that, on the motion of a person on community custody, the court may amend the substantive conditions of community custody imposed by the court if there has been a substantial change in circumstances such that the condition is no longer necessary for community safety.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Signed by 8 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 1 member: Representative Graham.

**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 convicted prior to the 1981 enactment of the Sentencing Reform Act, persons convicted of certain sex offenses committed on or after September 1, 2001, and persons convicted of one or more offenses committed prior to age 18 and sentenced as adults to a term of confinement longer than 20 years.

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, the sentencing court, and the ISRB in certain circumstances. 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 may be subject to sanctions.

The DOC may issue conditions of community custody when a person is released to the community based upon the risk to community safety. After receiving notice of a condition imposed or modified by the DOC, the person may request an administrative review. The condition must remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the person's risk of reoffending, or the safety of the community.

When a person on community custody is under the authority of the ISRB, the ISRB may impose conditions in addition to court-ordered conditions. After receiving notice of a condition imposed by the ISRB, a person may request an administrative hearing. The condition must remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- the crime of conviction;
- the person's risk of reoffending;
- the safety of the community;
- the person's risk of domestic violence reoffense.

Aggravated Murder in the First Degree.

A person is guilty of Aggravated Murder in the first degree if the person commits Murder in the first degree and one or more of 14 statutory aggravating circumstances are present. After an eligible person has completed the minimum term of the person's sentence for Aggravated Murder in the first degree, the ISRB must review the person's case for the possibility of release. If the person is released, the person is subject to community custody under the supervision of the DOC and the authority of the ISRB for a specified period of time.

#### Recent Cases.

In 2023 the Washington Supreme Court held in *In re Personal Restraint of Ansell* that the ISRB is authorized to impose community custody conditions that relate to the crime of conviction, the risk of reoffense, and the safety of the community; a condition that fails to relate to all three topics is invalid.

In 2023 the Washington Supreme Court held in *State v. Hubbard* that trial courts do not have the authority to modify a court-imposed discretionary community custody condition for an individual that is no longer serving a Special Sexual Offender Sentencing Alternative sentence.

#### **Summary of Engrossed Substitute Bill:**

The Indeterminate Sentence Review Board (ISRB) may impose or modify a person's community custody conditions. Regardless of the person's date of sentencing, additional conditions imposed or modified by the ISRB may be based upon the individual's:

- crime of conviction;
- risk of reoffense; or
- risk to community safety.

The ISRB may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. In modifying conditions of community custody, it is not a requirement that the additional conditions be crime related if the conditions reasonably relate to either the risk of reoffense or risk to community safety. The ISRB must notify the individual in writing of any additional or modified conditions.

A person may request an administrative review within 10 business days of receiving notice of a condition imposed or modified by the DOC or the ISRB.

On the motion of a person on community custody, following the person's release from total confinement, the court may amend the substantive conditions of community custody imposed by the court. The person has the burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that the condition is no longer necessary for community safety. In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on the fact that time has passed without a violation. Motions to modify community custody

conditions are limited to not more than once every 12 months. The time limit for collateral attacks does not apply to motions to amend conditions of community custody. Motions to modify community custody conditions may not reopen the person's conviction to challenges that would otherwise be barred by statute or other procedural barriers.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill responds to two Washington Supreme Court cases. There is support for this bill, but there is also a request for an amendment. This bill affects two populations of which the ISRB has jurisdiction, people with sex offense convictions and the juvenile ISRB population. The Washington Supreme Court held that a condition imposed by the ISRB must be related to all three criteria listed in statute, but the ISRB has been imposing conditions related to one of the criteria, not all three. When the ISRB is limited to applying conditions related to the crime of conviction, it does not encompass all the risk the individual may pose to the community. This affects roughly 1,600 to 1,700 people under community custody in the community under the ISRB's authority. It is important that the ISRB is able to respond to the changes someone has over their life and modify conditions of community custody accordingly. As a result of the court decision, the ISRB has had to deny some releases from prison because the ISRB is not able to impose the conditions that would keep the community safe. There is a request for the bill to prohibit the court from modifying conditions set by the DOC or the ISRB.

(Opposed) None.

(Other) Conditions that are not related to the crime of conviction are not related to preventing the person from committing another sex offense, and therefore should not be imposed. Allowing the ISRB to impose conditions that are not related to the crime of conviction weakens the provision of the bill related to *State v. Hubbard*. The retroactivity of the bill is unconstitutional. The bill violates due process rights of people who are under the supervision of the DOC. The bill grants the DOC authority to change the sentences of everyone who is under the DOC's supervision. The bill goes beyond the two court decisions in *In re Personal Restraint of Ansell* and *State v. Hubbard*. This bill removes the word "sex" in front of "offense" making the statute apply to those convicted of offenses other than sex offenses. Language should be added to the bill so that there are conditions on a person's motions to modify the conditions of community custody.

**Persons Testifying:** (In support) Representative Roger Goodman, prime sponsor; Kecia Rongen, Indeterminate Sentence Review Board; and Corey McNally.

(Other) Peter Ansell; Kari Reardon and Sonja Hardenbrook, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Russell Brown, Washington Association of Prosecuting Attorneys.

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