

HB 2434: Concerning Sanction for Violating Community Custody Conditions.

WACDL and WDA welcome the proposed amendment but believe that more must be done.

The Washington Defender Association (WDA) and The Washington Association of Criminal Defense Lawyers (WACDL) recognize the importance of enhancing public safety. While supporting the proposed amendment, WDA and WACDL do not believe that HB 2434 does enough. Additional change must occur so that violations of community custody are addressed in the most productive manner for the community and in turn, for the offender. This committee has the ability to structure a bill to positively impact an offender's ability to successfully rebuild his/her life.

A miniscule amendment to be slightly less Draconian will not eliminate criminogenic behavior. The legislature has the opportunity to address real treatment needs and to terminate punishment that does nothing to enhance public safety.

The majority of community custody violations are for failure to report to the Community Corrections Officer (CCO) or for nominal use of controlled substances (including marijuana). Many of the conditions of community custody imposed by the Department of Corrections (DOC) are not ordered by the court. Imagine trying to change a lifetime of behavior and only failing. Rather than reward positive steps towards change, DOC continually punishes mistakes. RCW 9.94A.737 imposes jail time for a second missed appointment with DOC or for testing positive. While three days may seem like a low-level punishment, it is time locked away.

Psychological research published by W.J. and Henry S. Eysenck, in "Criminological Theories: An Analysis of its Underlying Assumption," shows positive reinforcement for desirable behavior is effective at changing behavior. The same research indicates that harsh punishment actually leads to evasion, alienation and redirected aggression. More needs to be done to stop the use of incarceration as a form of treatment.

WDA and WACDL agree that a sixth violation should not necessarily result in a "high level violation" but believe that further action should be taken. Imposing jail for a second violation is not the appropriate answer: it results in people being afraid to address their behaviors and terminates the path of change. WDA and WACDL believe that all low-level violations should be treated as such and should not necessarily result in jail time. Therapeutic courts recognize that relapse is a part of recovery and use sanctions such as community service to address the relapse.

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