

HOUSE BILL REPORT

HB 2053

As Reported By House Committee On:
Corrections
Appropriations

Title: An act relating to sentencing.

Brief Description: Revising provisions relating to sentencing of offenders.

Sponsors: Representatives Morris, Long, R. Fisher and Ogden; by request of Governor Lowry.

Brief History:

Reported by House Committee on:
Corrections, March 3, 1993, DPS;
Appropriations, April 9, 1993, DPS(COR-A APP).

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Morris, Chair; Long, Ranking Minority Member; G. Cole; L. Johnson; Ogden; and Riley.

Minority Report: Do not pass. Signed by 3 members: Representatives Mastin, Vice Chair; Edmondson, Assistant Ranking Minority Member; and Padden.

Staff: Jim Lux (786-7841) and Bill Lynch (786-7092).

Background: When a person is convicted of a felony, the court generally punishes the offender by imposing a sentence within the sentence range established for that offense. Sentences may be imposed outside the sentencing range under certain circumstances. These statutory alternatives to the standard range include the First-time Offender Waiver and the Special Sex Offender Sentencing Alternative (SSOSA). A judge may use these waivers for certain eligible offenders. When the waivers are used, the court orders the offender to serve only a limited period of the sentence in total confinement and the remainder of the sentence is converted to community placement under certain conditions and prohibitions.

Alternatives to total confinement are also available for offenders with sentences of one year or less upon order of

the court. It has been suggested that alternative sentencing is more appropriate and cost-effective than total confinement in many cases.

Summary of Substitute Bill:

Alternatives to Jail Confinement - Zones 1 & 2

Two zones are created within the sentencing grid that apply to offenders with a jail sentence of zero to 12 months (Zones 1 & 2). The zones are determined by the length of the presumptive sentence:

Zone 1 (zero to 90 days). The sentencing judge fixes a period of total confinement not to exceed the midpoint of the standard range. The judge may convert all total confinement to community service, day fines, home detention, or drug and alcohol monitoring, or some combination of these authorized sentencing options.

Zone 2 (91 days to 1 year). The period of total confinement is established up to the midpoint on the sentencing range. The judge may convert all total confinement to any of the authorized sentencing options. These options include work crew, work release, home detention, day reporting, drug and alcohol monitoring, in-patient treatment, day fines, education or training, out-patient treatment, partial confinement, and community service.

A period of community supervision may be imposed to run until the authorized sentence options are complete, but not to exceed one year. A judge may impose a sentence without regard to Zone 1 and 2 considerations if the judge determines that the specific individual would jeopardize public safety. If the judge makes such a determination, the reasons must be set forth in writing. Such a sentence is not subject to appellate review. A judge may convert any authorized sentencing option to a different authorized sentencing option after notice and hearing.

Two-Month Temporary Sentence Reduction

Sentences are reduced by two months for offenders who are already in prison, except for serious violent offenders, inmates who committed violent offenses against minors, and sex offenders. The Department of Corrections is not required to release any offender who is within 30 days of release from total confinement.

The department is also required to reduce the sentence of total confinement by 60 days for all offenders who are

sentenced on or after the effective date of this legislation but before January 1, 1995. This two-month sentence reduction does not apply to people who committed serious violent offenses, violent offenses against minors, or sex offenses.

If a court determines that the department is required to apply the two-month sentence reduction to serious violent offenders, violent offenders against minors, or sex offenders, the two-month sentence reduction is void.

Special Drug Offender Sentencing Option

If a person convicted of dealing drugs has no prior felony convictions, has not committed an offense while armed with a deadly weapon, has not previously been sentenced under the special drug offender sentencing option, and only a small quantity of drugs were involved in the offense, then the offender is eligible for the special drug offender sentencing option.

If the judge finds that the offender and the community would benefit from the special drug offender sentencing option, the judge may waive the imposition of the standard sentence and impose a sentence that must include a sentence of total confinement that may not exceed one-half of the midpoint of the sentence range. The sentence must also impose at least one year of community custody, of which no more than three months may be served in work release. Community custody must include crime-related prohibitions, a prohibition against using controlled substances, and a requirement to submit to urinalysis or other drug or alcohol monitoring.

The sentence may also include requirements for the offender to: devote time to specific employment or training; undergo available treatment alternatives to street crime (TASC) or comparable outpatient treatment for up to the period of community custody; in-patient treatment not to exceed the confinement time imposed at sentencing; undergo day reporting; remain within prescribed geographic boundaries and notify the court or a community corrections officer of any change of employment or address; report to a community corrections officer as directed; pay all court-ordered legal financial obligations and perform community service work; pay day fine; and stay out of areas designated by the judge. An offender sentenced under the special drug offender sentencing option is considered to be in community custody. If the offender violates conditions of the sentence, sanctions are imposed by the Department of Corrections administratively. Notice of the violation must be provided to the prosecutor and sentencing court. If the court or the prosecutor move for a modification hearing, the hearing must

be held. If the court finds that the conditions of the sentence were wilfully violated, then the court may impose confinement of not more than an additional one-quarter of the midpoint of the standard sentence range. All periods of total confinement cannot exceed three-quarters of the standard sentence range.

Persistent Offenders

A persistent offender must be sentenced to a term of total confinement for the statutory maximum for the offense. If the statutory maximum for the offense is life imprisonment, then the offender is sentenced to a term of ninety-nine years. The persistent offender provisions do not change the law regarding the imposition of the death penalty.

A persistent offender is defined as a person who: commits an offense with a seriousness level of X or above on the sentencing grid, has been previously convicted at least two prior times of offenses with a seriousness level of X or above, and one of the prior offenses at level X or above was committed after the offender was convicted of another offense with a seriousness level of X or above.

Offenses that are ranked at a seriousness level of X or above are: Murder 1, homicide by abuse, Murder 2, Assault 1, Assault of a Child 1, Rape 1, Rape of a Child 1, Kidnapping 1, Rape 2, Rape of a Child 2, Child Molestation 1, damaging a building by explosion with threat to humans, delivery of heroin or narcotics by an adult to a minor, and leading organized crime.

Motor Vehicle Theft

The crime of motor vehicle theft is created and classified as a class B felony. For sentencing purposes, motor vehicle theft is ranked at a seriousness level II, and each prior adult conviction for motor vehicle theft counts as two points in the calculation of an offender's criminal history score. An adult who is convicted of motor vehicle theft on three separate occasions will have a presumptive sentence that results in prison confinement.

Work Ethic Camps

The Department of Corrections must establish at least one work ethic camp at an existing prison facility. The department is responsible for developing all aspects of the camp.

Offenders are recommended for consideration to participate in the camp at the time of sentencing by the sentencing

judge. An offender must be sentenced to a term of total confinement of at least two years in order to be eligible for placement in the camp. The department determines whether an offender is eligible for the camp, except that no sex offenders or violent offenders are eligible for placement in the camp.

An offender must serve at least 180 days in the camp. Upon the successful completion of the camp, an offender may be placed in authorized sentencing options, or the court may convert the remainder of the sentence to community custody. An offender's term of confinement is converted at the rate of three days of confinement for every one day of camp. The department is encouraged to explore the integration of a military-style approach to the camp, and to seek available federal funds.

Mechanism for Sentence Option Funding

A pool of funding for grants is established to enable counties to develop offender placements in alternative sentences to incarceration. The Department of Corrections and the Office of Financial Management (OFM) are required to develop guidelines and criteria for counties to develop plans for the development or expansion of alternatives to incarceration by June 1, 1993. Counties may apply for funding based on those plans after this date.

Plans must be reviewed as part of the local criminal justice planning process. The county legislative authority or the county executive must approve the plan prior to its submittal to OFM. The plans are reviewed and approved by OFM in conjunction with the Department of Corrections.

Plans submitted to OFM may represent one county or a combination of counties. The plans must contain estimates of funding for planning, development, or enhancement of alternative placements to incarceration. A single county or a combination of counties may elect to have the Department of Corrections develop and implement alternative sentencing placements on their behalf. Counties with a population over 20,000 that request technical assistance from the department must reimburse the department for the costs incurred.

Counties are eligible for funding for up to 75 percent of the costs identified in the plan. The counties must fund at least 25 percent of the costs of the plan, and may pursue fines, fees, and recoveries of costs from offenders who participate in the programs as an offset to their 25 percent share.

State funding to implement approved plans is subject to the availability of funds appropriated to the Department of Corrections and provided solely for this purpose. Moneys distributed from the state cannot be used to supplant existing funding currently expended by counties for alternative sentences to incarceration. The sum of \$2 million is appropriated to the Department of Corrections for the biennium ending on July 1, 1995 for these purposes. Of this total, \$1 million is appropriated from the county criminal justice assistance account, and \$1 million is appropriated from the general fund.

Offender Classification

The Department of Corrections is required to review the classification structure for establishing custody levels of prison inmates. The secretary is directed to seek technical assistance from the National Institute of Corrections. The review of the classification structure must be conducted every three years, beginning in 1993. The first report must be submitted to the 1997 Legislature.

Washington Council On Justice Policy

A 21-member Council on Justice Policy is created to review the state's long-range strategy for criminal justice policies. The focus of the council must include adult and juvenile justice issues, crime prevention, substance abuse and treatment, and criminal justice information reporting. The council must consult with state and local entities involved in the criminal justice system, including the Sentencing Guidelines Commission, the Juvenile Disposition Standards Board, the Office of Financial Management, the Administrator for the Courts, the Washington State Association of Counties, the Washington State Association of County Officials, the Association of Washington Cities, the Public Defenders Association, and the Washington Association of Sheriffs and Police Chiefs.

Membership on the council consists of one representative of: cities, counties, sheriffs and police chiefs, criminal defense attorneys, prosecuting attorneys, judiciary, higher education, common schools, crime victims' organizations, citizens from Eastern Washington, and citizens from Western Washington. In addition, two representatives of business and two representatives of labor are included as members on the council. Six legislators, two from each of the majority caucuses in the House of Representatives and the Senate, and one from each of the minority caucuses in the House of Representatives and the Senate are also appointed as members of the council.

The Office of the Governor determines the administrative and staff support to be provided to the council.

The council must report to the governor and the Legislature by January 15, 1995. The council expires on July 1, 1995.

Sentencing Guidelines Commission

The Sentencing Guidelines Commission is required to reevaluate the proportionality and fairness of sentences for felonies, as well as the practical workability of sentences and ranges. The commission is also directed to evaluate the impact of sentence alternatives provided by sentences imposed under zones 1 and 2, the special drug offender sentencing option, and the two-month temporary sentence reduction. The report must also describe changes in sentencing practices related to the use of alternatives to total confinement for nonviolent offenders, assess the impact on the use of alternatives on prison and jail populations, assess the savings in state and local resources, and assess the impact on recidivism rates.

In addition, the commission is required to conduct a study of misdemeanor offenses. The study will determine the magnitude of offenders convicted of misdemeanors, the extent to which offenders are sentenced differently, how sentences are served, analyze other relevant information, and recommend a determinate sentencing grid for misdemeanor offenses.

The commission must report its preliminary findings on felony sentences to the Legislature by December 1, 1994, and submit its final report by December 1, 1995. The commission must submit its report on misdemeanor sentences by December 1, 1995.

Substitute Bill Compared to Original Bill: The original bill established a modified sentence option (MSO) that applied to offenders with a sentence of one year and one day to three years. This option is deleted in the substitute bill. The MSO plan would have allowed the Department of Corrections to convert the remainder of a total confinement sentence to alternative sentence options after an assessment was performed by the department. All offenders, except for offenders who committed a sex offense, violent offense, or first time drug offense were eligible for this option. The court authorizes the offender's eligibility for the MSO based upon potential for rehabilitation and the community benefit. An offender sentenced under the MSO is considered to be in community custody.

The original bill reduced the seriousness level and reduced the sentences of certain nonviolent offenses. These changes are deleted in the substitute bill.

The Sentencing Guidelines Commission was directed in the original bill to ensure that the inmate populations in correctional facilities do not exceed maximum operational capacity. This is deleted in the substitute bill.

The substitute bill adds the two-month temporary sentencing reduction and work ethic camps. It also modifies the persistent offender provisions, motor vehicle theft, the special drug offender sentencing option, the composition of the Council on Justice Policy, and the mechanism for sentence option funding.

Fiscal Note: Requested February 26, 1993.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect July 1, 1993.

Testimony For: Nonviolent offenders are a significant proportion of our prison and jail populations. The Sentencing Reform Act of 1984 was intended to sentence offenders convicted of serious violent crimes to jail and prison and to sentence nonviolent offenders to community alternatives to incarceration. The goal of sending the more serious offenders to jail and prison is being met, but at the same time a larger and larger proportion of nonviolent offenders are also being sent to jail and prison. The Sentencing Reform Act also emphasized the need to use sentencing alternatives for nonviolent offenders without compromising public safety. Of primary importance to the Legislature was the goal of making frugal use of state resources. Over the years, since the implementation of the act, sentences for violent and nonviolent crimes have been increased and the result is unprecedented growth in the inmate populations in jails and prisons. There has been a corresponding decline in the number of offenders receiving alternative sentences. The cost of corrections has increased significantly during this period and is projected to increase at a rate much greater than the costs of other government programs. The capacity of the correctional system needs to expand, but in the area of less costly alternatives to incarceration. Many nonviolent offenders in our jails and prisons are and should be candidates for punishment in community sanctions. In addition, something needs to be done to reduce the rate of population increases in our jails and prisons. The cost of incarceration is exceeding the ability of the counties and state to fund and is diverting scarce government resources from other pressing local and state government needs and programs.

Testimony Against: Each time the Legislature has enhanced penalties for certain crimes it has been aware of the impact of those decisions on jails and prisons. The cumulative effect on the prison population and related expenditures resulting from those decisions were forecast and understood. The increased cost is not a surprise and is a worthwhile expenditure of government resources to maintain public safety. The fact that alternatives to incarceration are not more widely used, especially at the local level is because of the dangerousness of the offender and lack of funding to establish the necessary alternative placements for those who would not jeopardize public safety. Reducing jail and prison populations by changing the seriousness levels or capping the time a convicted offender is incarcerated is not an acceptable way to maintain public safety and save money. If offenders are to be diverted from jail and prison it should be at the discretion of the sentencing court and alternative sanctions must be in place to protect public safety. If savings to the state is absolutely necessary, then a flat reduction in prison time served, for a temporary period of time is a more acceptable alternative.

Witnesses: (Original bill, pro): Kit Bail, Indeterminate Sentence Review Board; Kurt Sharar, Washington State Association of Counties; Larry Fehr, Washington Council on Crime and Delinquency; Melanie Stewart, Treatment Alternatives to Street Crime; Steve Ross, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Suzanne Lee Elliot, Washington Appellate Defenders; Randy Scott, Quinault and Lummi Tribes; Dick Mades, Department of Corrections; Chris Dulis, Department of Corrections; and Reverend Robert Ellsworth, citizen. (Con on parts): Dave Boerner, University of Puget Sound Law School. (Con): Jim Nagle, Washington Association of Prosecuting Attorneys. (Substitute bill, pro): Bob Lasnik, Superior Court Judges Association; and Dave and Penny Williams, parents. (Pro with concerns): Dave Savage, Department of Corrections; Art Wallenstein, King County Department of Adult Detention; and Kurt Sharar, Washington State Association of Counties. (With amendments): Norm Maleng, King County Prosecutor. (Con on parts): Dave Boerner, University of Puget Sound Law School. (Con): Jeff Cox, Washington Retail Association.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Corrections be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass. Signed by 18 members: Representatives Locke, Chair; Valle, Vice

Chair; Carlson, Assistant Ranking Minority Member; Appelwick; Basich; Dellwo; Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard; Linville; Peery; Rust; Talcott; Wang; and Wolfe.

Minority Report: Do not pass. Signed by 6 members: Representatives Ballasiotes; Cooke; Morton; Sehlin; Sheahan; and Stevens.

Staff: John Woolley (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Corrections: An offender convicted of an offense on or after July 1, 1993, but before July 1, 1996, may earn early release time up to 45 percent of the total sentence. An offender convicted of a violent offense or sentenced pursuant to the special drug offender sentencing alternative may only earn early release time up to one-third of the total sentence.

The substitute bill would have allowed the Department of Corrections to reduce the length of total confinement by 60 days for all offenders except for people convicted of serious violent offenses, violent offenses committed against children, and sex offenses. The 60-day sentence reduction is deleted.

A judge who utilizes the special drug offender sentencing alternative (SDOSA) may waive imposition of a sentence within the standard range, and impose a sentence that includes a period of total confinement in a state facility for one-half of the midpoint of the standard range.

An offender is eligible for SDOSA if:

- The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug;
- The offender did not have an enhancement applied to his or her sentence for use of a deadly weapon;
- The offender had no prior convictions for a felony; and
- The offense involved only a small quantity of the particular controlled substance as determined by the judge. The judge is to consider such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

The judge must determine that the offender is eligible for SDOSA and that the offender and the community will benefit from its use before sentencing the offender under that option. The offender must be involved in substance abuse treatment provided by the Department of Corrections while incarcerated in the state facility.

The sentence must also include at least one year of community custody, of which no more than three weeks may be served in work release. Community custody must include crime-related prohibitions, a condition not to use illegal controlled substances, and submission to urinalysis or other testing to monitor that status. An offender can be required by the department to pay \$30 per month while on community custody to offset the cost of monitoring.

If the court finds that the conditions of a sentence have been wilfully violated, the court may impose confinement consisting of the remaining one-half of the midpoint of the standard range.

Home detention may be imposed for offenders convicted of a drug offense relating to possession, manufacture, or delivery of a controlled substance.

The sentencing judge determines whether to convert any portion of a jail sentence to sentencing options.

A representative of jail managers, juvenile court administrators, and community providers for juvenile offenders are added to the Washington Council on Justice Policy.

The Sentencing Guidelines Commission is also directed to prepare and submit a report by December 1, 1993, that updates the most recent capacity study of correctional facilities and programs, including projections on whether the implementation of the standard sentence ranges will exceed this capacity. The commission is no longer required to conduct a study on misdemeanor offenses.

The work ethic camp language is modified. The camp is to be a highly-structured and goal-oriented work program with drug rehabilitation and intensive life-management work.

The current authority for the governor to call the Sentencing Guidelines Commission into an emergency meeting if the population of a correctional facility exceeds its reasonable maximum capacity in order to adjust the standard ranges is modified. If the population of state correctional facilities exceed reasonable operational capacity for 60 or more consecutive days, the governor may declare an

emergency. After the Office of Financial Management (OFM) has certified the emergency conditions exist, the commission convenes in a special meeting to adopt sentence adjustments that will reduce the inmate population to reasonable operational capacity.

Each county is required to create a local law and justice council. The local law and justice plan developed by a council may include a section regarding alternatives to incarceration in jail and prison to be submitted to the Department of Corrections for funding. The plan may request up to 75 percent of the cost of alternatives to confinement without supplanting existing funding for current level services. Counties must fund at least 25 percent of the costs of alternatives to confinement that serve county offenders. The counties may assume fines, fees, and recoveries of cost from offenders who participate in the programs, and may provide services to state offenders as part of their match. The substitute bill required the plan to be submitted to the county for approval before its submittal to OFM for review and approval.

Fiscal Note: Available.

Appropriation: \$2 million from the state general fund to the Department of Corrections.

Effective Date: The bill contains an emergency clause and takes effect July 1, 1993.

Testimony For: The bill was worked and perfected for some considerable time in the Corrections Committee. While there may be need for some further amendments, it should be supported. Specifically, certain references to the Sentencing Guidelines Commission and emergency powers need to be addressed. The areas of drug offender options are sound policy. We need the provisions of the bill to help keep people from re-offending. It includes sections on raising the level of car theft; when coupled with other sections, this is a good reason to support the bill. The bill contains good public policy.

Testimony Against: None.

Witnesses: Representative Betty Sue Morris, prime sponsor; Representative Jeanine Long, sponsor; Chelan County Sheriff Dan Breda and Bill Closner, Washington Association of Sheriffs & Police Chiefs; Seth Dawson, Washington Association of Prosecuting Attorneys; Kurt Sharar, Washington State Association of Counties; Dave Fallen, Sentencing Guidelines Commission; and Larry Fehr, Washington Council on Crime and Delinquency (all support).