

SENATE BILL REPORT

E2SSB 5451

AS PASSED SENATE, APRIL 14, 1993

Brief Description: Revising sentencing and corrections for felons.

SPONSORS: Senate Committee on Ways & Means (originally sponsored by Senator Hargrove)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5451 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, Nelson, Niemi, Rinehart, and Spanel.

Staff: Susan Carlson (786-7418); Dick Armstrong (786-7460)

Hearing Dates: February 10, 1993; March 1, 1993

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5451 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chairman; Spanel, Vice Chairman; Bauer, Bluechel, Gaspard, Hargrove, Jesernig, Moyer, Owen, Pelz, Quigley, Snyder, Talmadge, Williams, and Wojahn.

Staff: Steve Lerch (786-7715)

Hearing Dates: March 18, 1993; April 5, 1993

BACKGROUND:

The Sentencing Reform Act includes in its purposes a goal of offering the offender an opportunity to improve him or her self. The act also encourages the use of alternatives to total confinement. In recent years, studies have found that the use of alternatives has declined and total confinement has increased.

Since 1987, drug dealers have not been eligible for the first-time offender waiver. The standard range sentence for a first offense delivery of cocaine is 21-27 months in prison. It has been suggested that certain drug offenders who are dealing to support their own drug habit should be given an opportunity to obtain treatment for their addiction.

The Indeterminate Sentence Review Board is responsible for determining how much prison time offenders under the old indeterminate sentencing law will be required to serve and

establishing parole conditions. Offenders can be on parole until the expiration of the statutory maximum term for their offense. The board is scheduled to expire on June 30, 1998. Prior to that time, the Governor is required to recommend to the Legislature alternatives for carrying out the duties of the board.

The Department of Corrections, Division of Correctional Industries, is required to develop and implement work programs that provide jobs, work experience and training to inmates and to reduce a portion of the financial burden of incarceration. The department operates five classes of work programs. The inmates receive financial compensation for their work ranging from \$30 per month for Class IV work programs to the prevailing wage for offenders employed in Class I jobs. The department is required to develop a formula to determine how much should be deducted from the inmate's wages to partially cover the cost of incarceration and development of correctional industries programs.

SUMMARY:

Drug Offender Sentencing Alternative: Drug offenders are eligible for a special drug offender sentencing alternative if they: 1) are convicted of manufacturing or dealing narcotics drugs, with no deadly weapon sentence enhancement; 2) have no prior or current felony convictions; and 3) the offense involved only a small quantity of drugs.

If the judge determines the offender is eligible and that the offender and the community will benefit, the judge may waive a standard range sentence and impose a sentence of one-half of the midpoint of the standard range. No more than three months of the sentence may be served on work release. The court shall impose one year of community custody which must include crime-related prohibitions, a condition to not use illegal controlled substances, and to submit to urinalysis. Other conditions which may be imposed include employment, outpatient treatment and financial obligations. Violations are imposed by the department administratively with notice to the prosecuting attorney and the court. The court may hold a violation hearing upon motion and may impose confinement consisting of the remaining one-half of the standard range.

Violent Offenses Committed in Prison: Offenders in prison because of a violent offense (murder, rape, assault, arson, kidnapping, robbery or first degree burglary) shall be sentenced to a mandatory minimum term of 15 years or a term within their standard range, whichever is greater, if they commit second degree murder, or first or second degree assault, rape, arson or robbery while in prison.

Exceptional Sentence: An exceptional sentence can be imposed based on a finding that the defendant poses a future danger of violent behavior.

Indeterminate Sentence Review Board: The board is required to prepare a detailed plan and recommendations for the transfer

of jurisdiction over inmates and parolees by December 1, 1995. A final order of discharge must be entered three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years. Parolees are not required to be on conditional discharge for one year prior to a final discharge order.

Correctional Industries: The Secretary of the Department of Corrections is required to increase inmate participation in class I and class II work programs to 15 percent of eligible inmates by December 30, 1998 and to 30 percent by December 30, 2001. The department is required to deduct 50 percent of the inmate's gross wages to pay for legal financial obligations. After legal financial obligations are paid, the deduction shall be deposited into the department's inmate personal savings account until the account reaches \$250. Thereafter, the 50 percent shall be applied to the cost of incarceration. The department is required to explore other ways to recover the cost of incarceration from inmates.

Inmate employment is to be meaningful and designed to reduce recidivism. In addition, correctional industries impact on in-state businesses is to be minimized. The nine-member board of directors is to be composed of three labor representatives, three business representatives representing a cross-section of industries and all sizes of employers, and three members from the general public. State agencies and the Legislature are to purchase all correctional industries goods and services that primarily replace goods and services obtained from outside the state.

The secretary must report to the Legislature by January 1, 1994, regarding any impediments to compliance with the inmate work participation percentages, and ways to achieve compliance.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Law & Justice):

The bill offers judges more discretion to use sentencing alternatives without jeopardizing public safety concerns. The emphasis on work programs for inmates in prison is important to reducing recidivism.

TESTIMONY AGAINST (Law & Justice):

The bill doesn't address alternatives for prison-bound nonviolent offenders. The correctional industries expansion time frames are unrealistic in light of infrastructure, training and marketing constraints.

TESTIFIED (Law & Justice): Norm Maleng, King County Prosecuting Attorney (pro); John Ladenburg, Pierce County Prosecuting

Attorney (pro); Kurt Sharar, Washington State Association of Counties (pro); Edith Rice, Department of Corrections (con); Dave Savage, Department of Corrections (con); Janeen Wadsworth, Department of Corrections (con)

TESTIMONY FOR (Ways & Means):

The special drug offender alternative sentencing in the bill will result in budget savings and is good policy. The Department of Corrections fiscal note underestimates the savings from this provision.

Longer sentences for serious crimes committed in prison will serve as a deterrent for such crimes. The addition of future potential for violent behavior to the aggravating circumstances which can result in longer sentences is positive and may result in savings to crime victims' compensation fund.

The expansion of correctional industries in the bill could lead to concerns about negative impacts on business, but private sector firms believe this is not the intent of the bill and that this issue can be successfully resolved.

TESTIMONY AGAINST (Ways & Means):

The large expansion of correctional industries will be difficult due to training needs of prisoners, the cost of additional capital facilities, issues related to displacement of private sector jobs, and difficulty of attracting private firms to create jobs for prisoners.

The 50 percent deduction of wages called for in the bill will lead to disincentives for prisoners to work and could result in some prisoners quitting existing jobs.

The marketing of goods and services created by an expansion in correctional industries is problematic. Current correctional industry facilities are not being used for double shifts because of the lack of demand for correctional industry goods.

The potential for a reduction in recidivism due to expanded correctional industry employment is uncertain. The results of studies on federal correctional industries and recidivism are not relevant to potential state impacts due to differences in state and federal prisoners in terms of education, age, and offenses committed.

TESTIFIED (Ways & Means): Mike Redman, WAPA (pro); Janeen Wadsworth, DOC (con); Jim King, RESTEC Contractors, Inc. (pro)

HOUSE AMENDMENT(S):

The House amendment includes the following provisions:

Nonviolent Offenders Sentencing Alternative: When sentencing an offender who is not a violent or sex offender, and whose standard range is 12 months or less, the court must first determine if the sentence should be served using sentencing

options. If total confinement is determined to be necessary, the court shall order the minimum time necessary to carry out the goals of the act.

Sentencing options may be imposed by converting total confinement into the options the court finds appropriate for the offender. Sentencing options are listed and defined.

The offender may be placed on community supervision for up to one year. After the successful completion of sentencing options and other conditions imposed, the offender or the Department of Corrections may petition the court to terminate community supervision.

Drug Offender Sentencing Alternative: Drug offenders are eligible for a special drug offender sentencing alternative if they: 1) are convicted of manufacturing or dealing narcotics drugs, with no deadly weapon sentence enhancement; 2) have no prior felony convictions; and 3) the offense involved only a small quantity of drugs.

If the judge determines the offender is eligible and that the offender and the community will benefit, the judge may waive a standard range sentence and impose a sentence of one-half of the midpoint of the standard range. No more than three months of the sentence may be served on work release. The court shall impose one year of community custody which must include crime-related prohibitions, a condition to not use illegal controlled substances, and to submit to urinalysis. Other conditions which may be imposed include employment, outpatient treatment and financial obligations. Violations are imposed by the department administratively with notice to the prosecuting attorney and the court. The court may hold a violation hearing upon motion and may impose confinement consisting of the remaining one-half of the standard range.

Persistent Offenders: A person who commits three serious violent offenses is a persistent offender who must be sentenced to life without parole. 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 a serious violent offense or rape in the second degree, has been previously convicted at least two prior times of a serious violent offense or rape in the second degree, and one of the prior offenses was committed after the offender was convicted of the other offense.

"Serious violent offense" means murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree.

Adds assault of a child in the second degree, robbery in the first degree, indecent liberties, sexual exploitation, arson

in the first degree, and burglary in the first degree for purposes of defining persistent offenders.

Vehicular Homicide: Persons convicted of vehicular homicide or vehicular assault, that are sentenced to the custody of the Department of Corrections and have been found to have a drug or alcohol problem, upon release shall be placed on community placement for one year or the period of earned early release, whichever is longer. On community placement the person shall 1) abstain from drugs or alcohol, 2) complete any treatment recommended, 3) pay legal financial obligations, 4) pay supervision fees, and 5) report to the community corrections officer. All other conditions are waived.

Sentencing Guidelines Commission: The Sentencing Guidelines Commission is required to reevaluate the proportionality and fairness of sentences for felonies. The Commission is also directed to evaluate for the impact of sentence alternatives for the special drug offender and non-violent offender sentencing options. 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.

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.

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.

Mechanism for Sentence Option Funding: A pool of state funds is provided to develop, implement, or enhance sentencing alternatives for offenders with sentences of less than one year. Proposed plans for alternative sentences to incarceration must be reviewed and approved by the Department of Corrections in conjunction with the Office of Financial Management. State funding for approved plans shall be provided from funds appropriated to the Department of Corrections for local sentencing alternatives. The counties must fund at least 25 percent of the costs of alternatives. Each \$3 received from the state must be matched by at least \$1 from other funding sources available to counties. \$2 million appropriation from the state general fund is provided to the Department to fund alternatives to incarceration.

Washington Council on Justice Policy: A 24 member council is created to review the state's long-range strategy for criminal justice policies.

Offender Classification: The Department of Corrections is required to review every three years the classification

structure for establishing custody levels of prison inmates. The secretary is directed to seek technical assistance from the National Institute of Corrections.

Sentencing Guidelines Commission Emergency Powers: After the Governor has declared an emergency the Commission must meet to adopt sentence adjustments that will reduce the inmate population to reasonable operational capacity. Early release can not exceed 4 months and sex offenders and violent offenders are not eligible.

Work Ethic Camps: The Department of Corrections is required to establish one work ethic camp. The provisions are essentially the same as in ESHB 1922 which passed the Senate.

Sexually Violent Offenders: A person convicted of a sexually violent offense must be sentenced to a term of total confinement of life imprisonment without the possibility of release, community custody, or parole if the court finds beyond a reasonable doubt, at a special sentencing proceeding following conviction, that the person is a sexually violent predator. The court may impose a lesser sentence if there are mitigating circumstances. The sections pertaining to imprisonment of sexually violent offenders do not take effect unless the Washington Supreme Court rules that the civil commitment of sexually violent predators is unconstitutional.

Work Crew: Eliminates restriction allowing work to be done only on public property or property owned by nonprofits.

First Time Offender Waivers: The first time offender waiver is limited to sentences with a standard range greater than 90 days.

Educational Programs: Provides that every person, with certain exceptions, sentenced to a correctional institution shall be making satisfactory progress towards completing a high school education, achieve an equivalent score on the general educational development test, or be actively enrolled in a similar education program or adult basic education program similar educational program or adult basic education program before any earned time credits may be used to reduce the person's term of total confinement, or they can participate in class I, II, or IV work programs, if such educational programs are available.

Seriousness Enhancements: Includes robbery 1 involving a motor vehicle as a serious violent crime and enhances the seriousness by one level of robbery 1 and 2 involving a motor vehicle for purposes of sentencing offenders under the sentencing grid.

Firearms Enhancements: Increases penalties for offenses committed with a firearms. Distinguishes penalties between "deadly weapon" and "guns" Increases penalties for second and subsequent offenses.

Gangs: Allows for sentence enhancement if crime was gang-related.