

HOUSE BILL REPORT

HB 1863

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to drug offenders.

Brief Description: Revising penalties for drug offenses.

Sponsors: Representatives Kagi (co-prime sponsor), Ballasiotes (co-prime sponsor), O'Brien, Dickerson, Darneille and Wood.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/19/01, 2/26/01 [DPS].

Brief Summary of Substitute Bill

- Reduces the seriousness level for the crimes involving the manufacture, delivery, or possession of heroin, or cocaine from a level VIII to a level VII.
- Reduces the seriousness level for the crime of selling a controlled or counterfeit controlled substance for profit from a level VIII to a level VII.
- Eliminates the triple and double scoring for drug offenders with the exception of certain methamphetamine offenders.
- Sets up a dedicated account with the savings resulting from the reduced sentences to be used to fund treatment for drug offenders and drug courts.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Lovick, Democratic Vice Chair; Kagi, Kirby and Morell.

Minority Report: Do not pass. Signed by 2 members: Representatives Ahern, Republican Vice Chair; and Cairnes.

Staff: Yvonne Walker (786-7841).

Background:

It is illegal for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. A person convicted of a controlled substance offense receives a sentence based upon his or her prior criminal history and the seriousness of the offense. However, in the case of multiple prior convictions for the purpose of computing an offender's score, if the present conviction is for a drug offense, an offender receives three points for each adult prior felony drug conviction and two points for each juvenile drug conviction.

The crime of manufacturing, delivering, or possessing with intent to deliver heroin or cocaine is a seriousness level VIII, class B felony. A first time adult offender would generally receive a presumptive sentence range of 21 to 27 months in prison. An offender who commits one of these crimes is also subject to fines as follows: (1) up to \$25,000 if the crime involved less than two kilograms of the drug; or (2) up to \$100,000 for the first two kilograms and \$50 for each gram in excess of two kilograms.

In addition, an offender who commits the crime of selling a controlled or counterfeit controlled substance for profit is guilty of a seriousness level VIII, class C felony. A first time adult offender would generally receive a presumptive range of 21 to 27 months in prison. Any person convicted on a second or subsequent offense, the sale having transpired after prosecution and conviction on the first cause, must receive a mandatory sentence of five years in a correctional facility.

A person convicted of selling heroin must receive a mandatory sentence of two years in a correctional facility. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin must receive a mandatory sentence of 10 years in a correctional facility.

Furthermore, an offender found guilty of selling a controlled or counterfeit controlled substance may also be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained as a result of the drug sale, up to an amount of \$500,000 on each count.

Summary of Substitute Bill:

A person convicted of a controlled substance offense receives a sentence based upon his or her prior criminal history and the seriousness of the offense. However, in the case of multiple prior convictions for the purpose of computing an offender's score, if the present conviction is for a manufacturing of methamphetamine offense,– an offender receives three points for each adult prior conviction involving manufacturing of methamphetamine,– and two points for each juvenile manufacturing of methamphetamine– offense.

It is a seriousness level VII felony offense to commit one of the following crimes:

- Manufacturing, delivering, or possessing with intent to deliver heroin or cocaine; or
- Selling a controlled or counterfeit controlled substance for profit.

A first time adult offender would generally receive a presumptive sentence range of 15 to 20 months in prison.

This act applies to crimes committed on or after July 1, 2001.

A criminal justice treatment account is created in the state treasury. Revenues to the criminal justice treatment account consist of savings resulting from the reduced drug sentencing. Funds in the account may be only spent, after appropriation, for substance abuse treatment for offenders filed upon by a prosecuting attorney in Washington and for drug courts.

The Department of Corrections (DOC), the Sentencing Guidelines Commission (SGC), and the Caseload Forecast Council must develop a methodology for calculating the projected biennial savings resulting from the reduced drug sentencing. Savings must be projected for the fiscal biennium beginning on July 1, 2003, and for each biennium thereafter. By December 1, 2001, the proposed methodology must be submitted to the Governor and the appropriate committees of the Legislature. The methodology is deemed approved unless the Legislature enacts legislation during the 2002 session to modify or reject the methodology.

By December 1, 2002, and December 1 of each even-numbered year thereafter, the DOC must use the approved methodology to calculate savings to the state general fund for the ensuing fiscal biennium resulting from reductions in drug offender sentencing. The department must report the dollar amount of the savings to the Office of the State Treasurer and the fiscal committees of the Legislature.

For the fiscal biennium beginning July 1, 2003 and each fiscal biennium thereafter, the treasurer must transfer the amount reported for that biennium into the criminal justice treatment account, divided into eight equal quarterly payments. In each odd-numbered year, the Legislature must appropriate the amount transferred to the criminal justice treatment account to the Division of Alcohol and Substance Abuse (DASA) who will serve as the fiscal agent.

Seventy percent of amounts appropriated to the DASA from the criminal justice account must be distributed to counties pursuant to a distribution formula. The DASA, in consultation with the DOC, the SGC, the Washington State Association of Counties, the Washington State Association of Drug Court Professionals, representatives of the criminal defense bar, and any other person deemed by the DASA to be necessary, must establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County plans submitted for the expenditure of formula funds must be approved by the panel.

The remaining 30 percent of the amounts appropriated to the DASA from the account must be distributed as grants for the purpose of treating offenders against whom charges are filed by a county prosecuting attorney. The DASA must appoint a panel of representatives from the Washington Association of Prosecuting Attorneys, the Washington Association of Sheriffs and Police Chiefs, the Superior Court Judges Association, the Washington State Association of Counties, the DOC, and the DASA. The panel must award the grants to eligible counties that have submitted plans and must approve expenditure plans for grant funds. The panel must attempt to ensure that treatment as funded by the grants is available to offenders statewide.

The county chemical dependency specialist, in consultation with the county prosecutor, county sheriff, and county superior court, must jointly submit a plan for disposition of all the funds provided from the criminal justice treatment account within that county. The funds must be used solely to provide approved alcohol and substance abuse treatment. Counties are encouraged to consider regional agreements for the efficient delivery of treatment.

Funds must be appropriated for the biennium ending June 30, 2003, from the general fund/public safety and education account to the criminal justice treatment account for the initial implementation of this act. The DSHS must annually audit the expenditures made by any county that receive funds. Any county found not to have used the funds appropriately must repay such amounts.

Substitute Bill Compared to Original Bill:

The seriousness level for manufacturing, delivering, and possessing amphetamines is restored back to a seriousness level VIII (as in current statute) from a level VII.

A dedicated criminal justice account is established with the savings resulting from reduced drug sentences. The DOC, the SGC, and the Caseload Forecast Council must develop a methodology for calculating the projected biennial savings. By December 1, 2001, the proposed methodology must be submitted to the Governor and the Legislature and is deemed approved unless the Legislature enacts legislation during the 2002 session to modify or reject the methodology.

Seventy percent of the savings must be distributed to counties pursuant to a distribution formula and the remaining amount of savings in the criminal justice treatment account must be distributed as grants to counties for purposes of treating.

Appropriation: An unspecified amount is appropriated from the general fund/public safety and education account to the criminal justice treatment account created within the State Treasurer.

Fiscal Note: Requested on February 18, 2001.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2001.

Testimony For: Drug addiction has been destroying families and communities for years and now it is time to move our drug policy in a new direction. Judges have the authority to use treatment alternatives at the local level; however they do not have the funding to do it. Since we are currently in a year of budget constraints and there is no more new money, the savings that will result from the shorten sentences in this bill must be put in a secure account to be used for treatment at the local level.

Furthermore, although substance abuse needs to be coupled with certain and swift sanctions, there are proven facts that treatment works whether it is voluntary or involuntary. The increase of offenders being put into treatment programs over the last year, such as the DOSA (drug offender sentencing alternative) program, has lead to whole prisons being taken of the books for capital construction.

This piece of legislation will not change who will go to prison.

(With concerns) All offenders, including juveniles, should be covered in this bill and not just adult offenders. Funding should also be able to be used for both juveniles as well as adult drug offenders. There should also be a dedicated account solely for the purposes of treatment in the criminal justice system and it should not supplant current criminal justice funds. In addition, the DOC should not be the funding administer. The fiscal agent should be DASA.

Furthermore, the Legislature should ensure that this bill will not undermine drug courts. A provision should be included in the bill to ensure that a portion of the funding may be used for drug courts and that the funding is only one of may funding sources available for drug courts.

The bill needs to ensure that there is uniform flexible treatment funding available in every county including those smaller counties. In addition the provision in the bill that requires that the funds may only be used for approved alcohol and substance abuse treatment providers is unduly restrictive. Drug courts often used providers that are not state-certified.

Testimony Against: There are numerous drug dealers in a number of areas throughout Seattle. These people destroy residential property, store fronts, and even puts law enforcement officers, business communities, and citizens at risk. As a result, law abiding middle class citizens must pay for it.

The Legislature must look at the consumer addict otherwise known as the small time

dealers. These people are released back into the community usually without a job. This leads to an increase in drug dealers on the streets which affect business, as well as programs for the aging and the young.

Testified: (In support) Representative Kagi, co-prime sponsor; Norm Maleng, King County Prosecutor, Russ Hauge, Kitsap County Prosecutor; Joe Lehman, Secretary for Department of Corrections, Dave Boermer, Sentencing Guidelines Commission; Jane Peabody, King County Chemical Dependency and Mental Health Services; and Brian Gain, Judge of the Superior Court.

(In support with concerns) Michel J. Tickey, Washington State Association of Drug Court Professionals.

(Opposed) Rudy McCoy, citizen.