

HOUSE BILL REPORT

HB 2338

As Reported by House Committee On:

Criminal Justice & Corrections

Title: An act relating to the recommendations of the sentencing guidelines commission regarding drug offenses.

Brief Description: Revising sentences for drug offenses.

Sponsors: Representatives Kagi, Ballasiotes, O'Brien, Lantz, Dickerson, Linville, McIntire, Conway and Wood.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/22/02, 1/25/02 [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.
- Eliminates the triple and double scoring for drug offenders with the exception of offenders committing certain methamphetamine offenses.
- Creates a new Drug Sentencing Grid for the sole purpose of sentencing offenders convicted of drug crimes that are committed on or after July 1, 2004.
- 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 O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Kagi, Kirby and Morell.

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

Staff: Yvonne Walker (786-7841).

Background:

Statistics show that 80 percent of Washington's incarcerated offenders were arrested for a drug offense or a crime that was a result of a chemical dependency. Most of these offenders are sentenced to a term of confinement in jail or prison while others are placed in alternative sentencing programs such as the state's Drug Offender Sentencing Alternative (DOSA) or a county-operated Drug Court.

The DOSA program authorizes a judge to waive imposition of an offender's prison sentence within the standard range. An offender participating in the DOSA program spends a portion of his sentence in prison, and the remainder of his sentence is spent in the community while participating in some type of mandatory alcohol and substance abuse treatment.

Drug Courts. Drug courts, on the other hand, diverge from traditional courts by diverting non-violent drug criminals into court-ordered treatment programs rather than jail or prison. The program allows defendants arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration and a criminal record.

Counties are authorized to establish drug court programs to accept offenders that have been diverted by the courts from the normal course of prosecution for drug offenses, however they are not required to establish minimum requirements for offenders participating in the program.

The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance-abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

There are drug courts operating in approximately 12 counties throughout Washington.

Sentencing Grid. Generally, under the Uniform Controlled Substance Act, it is illegal for any person to possess, sell, manufacture, or deliver controlled drugs. A person convicted of a controlled substance offense receives a sentence within the standard range for the offense which, under the Sentencing Reform Act, is calculated using the seriousness level of the current offense and the extent of the offender's criminal history. Most violations of the Uniform Controlled Substance Act are ranked from a seriousness level I to a level VIII depending upon the offense.

For example, the crime of manufacturing, delivering, or possessing with intent to deliver heroin or cocaine is a seriousness VIII felony offense. A first time offender convicted of this particular crime would generally receive a presumptive range of 21 to 27 months in prison.

Sentencing Grid with Drug Crimes. The seriousness level ranking for all violations of the Uniform Controlled Substance Act, listed on the felony sentencing grid within the SRA, along with the presumptive sentencing range for a first time offender are as follows:

<p>Level X (Five years in prison)</p> <ul style="list-style-type: none"> · Manufacture of methamphetamine · Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18. 	<p>Level IX (Three years in prison)</p> <ul style="list-style-type: none"> · Controlled Substance Homicide · Over 18 and deliver narcotic from Schedule III, IV, or V or a non-narcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and three years junior.
<p>Level VIII (Two years in prison)</p> <ul style="list-style-type: none"> · Deliver or possess with intent to deliver methamphetamine · Manufacture, deliver, or possess with intent to deliver amphetamine · Manufacture, deliver, or possess with intent to deliver heroin or cocaine · Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine · Selling for profit (controlled or counterfeit) any controlled substance. 	<p>Level VII (18 months in prison)</p> <ul style="list-style-type: none"> · Involving a minor in drug dealing.
<p>Level VI (13 months in prison)</p> <ul style="list-style-type: none"> · Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV. 	<p>Level V (Nine months in jail)</p> <ul style="list-style-type: none"> · Delivery of imitation controlled substance by person 18 or over to person under 18.

<p>Level IV (Six months in jail)</p> <ul style="list-style-type: none"> · Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam). 	<p>Level III (Two months in jail)</p> <ul style="list-style-type: none"> · Delivery of a material in lieu of a controlled substance · Maintaining a dwelling or place for controlled substances · Manufacture, deliver, or possess with intent to deliver marijuana · Manufacture, distribute, or possess with intent to distribute an imitation controlled substance · Unlawful use of building for drug purposes.
<p>Level II (Zero - 90 days in jail)</p> <ul style="list-style-type: none"> · Create, deliver, or possess a counterfeit controlled substance · Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV · Possession of phencyclidine (PCP). 	<p>Level I (Zero - 60 days in jail)</p> <ul style="list-style-type: none"> · Forged prescription · Forged prescription for a controlled substance · Possess controlled substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam).

Scoring. 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.

Summary of Substitute Bill:

The scoring process is revised and incarceration sentences are reduced for offenders convicted of heroin and cocaine type of drug offenses, beginning on July 1, 2002. In addition, a new sentencing grid will take effect, July 1, 2004, for the sole purpose of sentencing offenders convicted of drug crimes. Savings resulting from the combination of the reduction of sentences, the new drug sentencing grid, and the revised scoring process is redirected back to the community and the state to fund chemical dependency treatment and supervision for drug offenders.

Drug Courts. Counties are required to establish minimum requirements for the participation of offenders in their county-operated drug court. The drug court may adopt local requirements that are more stringent; however at a minimum the requirements must include the following:

- The offender will benefit from chemical dependency treatment;

- The offender has never been convicted of a serious violent or sex offense;
- The offender is currently not charged or convicted of an offense that involves a firearm, an offense involving force, harm or death against another person; and
- The drug court may have the discretion to admit or deny a person's entry into the program.

Sentencing Grid. Effective July 1, 2002, the seriousness level for an offender convicted of the crime of manufacturing, delivering, or possessing with intent to deliver heroin or cocaine is reduced from a seriousness level VIII to a seriousness level VII felony offense. A first time offender convicted of this particular crime would generally receive a presumptive sentencing range of 15 to 20 months in prison.

Sentencing Grid with Drug Crimes. An offender convicted of a drug offense committed on or after July 1, 2004, receives a sentence that is calculated using a Drug Sentencing Grid instead of the standard sentencing grid for all felony violations. Violations of the Uniform Controlled Substance Act are ranked from a seriousness level I to a level III on the drug grid depending upon the offense.

The seriousness level ranking listed on the Drug Sentencing Grid, along with the presumptive sentencing range and sentencing alternatives available for a first time offender with no prior criminal history, are as follows:

<p>Level III (51-68 months in prison or DOSA)</p> <ul style="list-style-type: none"> · Any drug offense that involves a deadly weapon special verdict · Manufacture of methamphetamine · Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 · Controlled Substance Homicide · Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and three years junior · Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine · Selling for profit (controlled or counterfeit) any controlled substance · Involving a minor in drug dealing · Delivery of imitation controlled substance by person 18 or over to person under 18. 	<p>Level II (12 - 20 months in prison, Drug Court, or DOSA)</p> <ul style="list-style-type: none"> · Deliver or possess with intent to deliver methamphetamine · Manufacture, deliver, or possess with intent to deliver amphetamine · Manufacture, deliver, or possess with intent to deliver heroin or cocaine · Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV · Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) · Delivery of a material in lieu of a controlled substance · Maintaining a dwelling or place for controlled substances · Manufacture, distribute, or possess with intent to distribute an imitation controlled substance · Create, deliver, or possess a counterfeit controlled substance.
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Level I (Zero - 6 months in jail or Drug Court)

- Manufacture, deliver, or possess with intent to deliver marijuana
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV
- Forged prescription
- Forged prescription for a controlled substance
- Possess controlled substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam)
- Possession of phencyclidine (PCP).

Any sentence imposed under the Drug Sentencing Grid is not appealable.

Scoring. Triple score is eliminated for purposes of calculating an offender's score for a drug offense. All drug offenses, with the exception of cases involving manufacturing methamphetamine, are counted as one point for each prior adult drug offense and 0.5 point for each prior juvenile drug offense.

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 prior convictions involving a "manufacturing of methamphetamine" offense.

Task Force. A Joint Select Committee on the Drug Offense Sentencing Grid is established consisting of persons who represent the following: one member from each of the two largest caucuses of the Senate, appointed by the President of the Senate; one member from each of the two largest caucuses of the House of Representatives, appointed by the Speaker of the House; a superior court judge, selected by the Superior Court Judges Association; a prosecuting attorney, selected by the Washington Association of Prosecuting Attorneys; a member selected by the Washington State Bar Association, whose practice includes a significant amount of time devoted to criminal defense work; an elected sheriff or a police chief, selected by the Washington Association of Sheriffs and Police Chiefs; a representative from the Division of Alcohol and Substance Abuse (DASA) in the Department of Social and Health Services; a member of the Sentencing Guidelines Commission (SGC); a member of the Caseload Forecast Council; a

representative from the Office of Financial Management (OFM); a representative from the Department of Corrections (DOC); a representative from the Washington State Association of Counties; a drug and alcohol coordinator; and a representative from the Washington State Association of Drug Court Professionals. The chair and vice chair of the committee must be chosen by the members of the committee.

The committee must review and make recommendations by June 1, 2003, to the Legislature and the Governor regarding the Drug Offense Sentencing Grid. In preparing the recommendations, the committee shall:

- Establish a methodology of determining the fiscal consequences to the state and local governments, including the calculation of savings to be dedicated to substance abuse treatment, resulting from the implementation of the grid and any recommended revisions to the grid;
- Review and recommend any changes in the sentencing levels and penalties in the drug sentencing grid;
- Consider the proportionality of sentencing based on the quantity of controlled substances;
- Examine methods for addressing issues of racial disproportionality in sentencing;
- Recommend a statewide method of evaluating the success of drug courts in terms of reducing recidivism and increasing the number of persons who participate in drug court programs and remain free of substance abuse;
- Review and make any appropriate revisions in statewide criteria for funding substance abuse treatment programs for defendants and offenders; and
- Review and make any recommendations for changes in the method of distributing funding for defendant and offender drug treatment programs.

The staff of the Legislature, the SGC, and the Caseload Forecast Council must provide support to the committee.

Non-legislative and legislative members of the committee must serve without compensation, but are eligible for reimbursement for travel expenses.

The task force expires December 31, 2003.

Savings for Treatment. 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 and any other revenues appropriated or deposited into the account. Funds in the account may be spent solely for substance abuse treatment for offenders filed upon by a prosecuting attorney in Washington and treatment for nonviolent offenders participating in drug courts.

The DOC, the SGC, the OFM, and the Caseload Forecast Council must develop a methodology for calculating the projected biennial savings resulting from the reduced seriousness level in drug sentencing. Savings must be projected for the fiscal biennium

beginning on July 1, 2003, and for each biennium thereafter. By September 1, 2002, 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 to modify or reject the methodology.

In each biennial budget request, 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, the OFM, and the fiscal committees of the Legislature.

For the fiscal biennium beginning July 1, 2003, and each fiscal biennium thereafter, the treasurer must transfer 25 percent of the funds saved into the Violence Reduction and Drug Enforcement Account to be used solely for providing drug and alcohol treatment services to offenders receiving a reduced sentence under the new sentencing schemes and who have been assessed with a chemical dependency. Any remaining funds may be used to provide treatment for sex or violent offenders confined in a state correctional facility and who are assessed with an addiction or a substance abuse problem that contributed to the crime.

The remaining 75 percent of the savings amount reported for that biennium must be transferred into the Criminal Justice Treatment Account to be appropriated to the DASA. The DASA, serving as the fiscal agency, must distribute 70 percent of the amount transferred to them to counties based upon a formula that is established in consultation with a panel of people representing the following agencies: the DOC, the SGC, the Washington State Association of Counties, the Washington State Association of Drug Court Professionals, the Superior Court Judges' Association, the Washington Association of Prosecuting Attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary. County and regional plans for the expenditure of funds must be submitted to and approved by the panel.

Thirty percent of the remaining funds appropriated to the DASA 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 following agencies: Washington Association of Prosecuting Attorneys, the Washington Association of Sheriffs and Police Chiefs, the Superior Court Judges' Association, the Washington State Association of Drug Court Professionals, the Washington State Association of Counties, the Washington Defender's Association or the Washington Association of Criminal Defense Lawyers, the DOC, a substance abuse treatment provider, and the DASA itself. The panel must approve and award the grants to eligible counties or groups of counties that submit plans for the grant funds. The panel must attempt to ensure that treatment, as funded by the grants, is available to offenders statewide.

Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment. Each plan that is submitted by a county or group of counties must be submitted jointly by the county chemical dependency specialist, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, and a member of the criminal defense bar appointed by the county legislative authority.

Any funds received by a county or group of counties may be used to supplement and not supplant, other federal, state, and local funds used for substance abuse treatment.

An entitlement program is not created for any defendant sentenced under the Drug Grid.

Substitute Bill Compared to Original Bill:

A number of technical amendments are made. The Washington State Institute for Public Policy must evaluate the effectiveness of the new grid and supply a preliminary report to the Legislature by December 1, 2007, and a final report by December 1, 2008. The crime of "unlawful use of building for drug purposes," which was missing on the Drug Grid in the original bill, is listed as a seriousness level 1 on the grid in the substitute bill. The Joint Select Committee on the Drug Offense Sentencing Grid must select the vice chair of the committee. The DOSA and Drug Court language is removed from the Drug Sentencing Grid and instead listed as a reference under the new Drug Grid. A member of the Washington State Association of Drug Court Professionals is added to the panel of people who must help to review expenditure plans submitted by counties or groups of counties for grant funds.

In the original bill any county that applied for a grant was required to submit an expenditure plan which must be jointly approved by a variety of individuals from the county. The substitute bill requires a drug court representative to sign off on the expenditure plan, if available in that county.

Any excess savings remaining after providing chemical dependency treatment services to offenders sentenced under the act may be spent for substance abuse treatment for all drug offenders that are currently incarcerated instead of just incarcerated "sex or violent offenders" with a substance abuse problem as listed in the original bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains several effective dates. Please refer to the bill. However, the bill is null and void unless funded in the budget.

Testimony For: Prison population has increased drastically over the last couple of years and the growing majority of those incarcerated in prison are drug offenders. If we treat those addictions up front, it will be less likely that these people will cycle back into the community as a continuous drug offender. This bill reduces sentences for drug delivery, captures that savings, and uses it for drug treatment and drug court. The bill maintains the courts' prerogative to use exceptional sentences over and above the standard sentencing range and it also maintains the provisions to additionally punish drug dealers who sale or possess drugs in drug-free zones. This bill also expands judicial discretion. It recommends eligibility for drug courts and it increases or maintains the same sentences for those drug offenses involving: selling for profit, methamphetamine, and children.

The sponsor of the bill may want to consider three other amendments that include: 1) To further reduce the seriousness level for drug offenses down from a level VIII down to a level VI; 2) To adjust the earned early release statute to allow drug offenders to receive 50 percent off their sentence for good time as opposed to the current 33 percent; and 3) To broaden the definition of treatment services so that treatment funding addressed in the bill may also be used for other treatment-related services such as literacy training and transportation to and from an individual's chemical dependency treatment sessions.

Currently, due to lack of bed space and budget constraints, it can take a drug user up to five weeks to get a bed in a drug treatment facility. In some instances, this may too late. Others who are lucky enough to get help or are referred to drug court often get a second chance at life.

An amazing number of entities have shown their support for this bill including the Sentencing Guidelines Commission, the DOC, the Department of Social and Health Services, as well as judges, prosecutors, defenders, and churches, just to name a few. This bill will be opposed, and lobbied against, if the funding is stripped out of the bill and used to fund the General Fund instead of drug treatment.

Testimony Against: None.

Testified: Representative Kagi, prime sponsor; Norm Maleng, King County Prosecutor; Dave Boerner, Sentencing Guidelines Commission; Russ Hauge, Washington Association of Prosecuting Attorneys and Kitsap County Prosecutor; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Judge Mike Trickey, King County Superior Court; Judge Bruce Conoe, Pierce County Superior Court; Judge Rick Strophy, Washington State Association of Drug Court Professionals; Sherry Appleton, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; Kevin Glakin-Coley, Washington State Catholic Conference; Al Swindell, Clark County Substance Abuse Board; Kimberly Whitten, Pacific Crest Consortium and Citizen; David Laws and Carey Morris, Prosperity Treatment Center; Jean Wessman, Washington State Association of Counties; Sarajane Siegfriedt, Association of Alcoholism and Addiction Programs of Washington State; Scott Lord, Snohomish County Deputy Prosecutor's

Office; Dan Merkle, Merkle, Siegal, and Friedrichsen; Mary Dessen, Drug Court of Snohomish County and Catholic Community Services; Tom Kelly, King County Bar Association; Alan Mountjoy-Venning, Friends Committee on Washington State Public Policy; Ken Stark, Department of Social and Health Services and Division of Alcohol and Substance Abuse; Eldon Vail, Department of Corrections; and Jerry Sheehan, American Civil Liberties Union of Washington.