

FINAL BILL REPORT

2SHB 2338

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Synopsis as Enacted

Brief Description: Revising sentences for drug offenses.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Kagi, Ballasiotes, O'Brien, Lantz, Dickerson, Linville, McIntire, Conway and Wood).

House Committee on Criminal Justice & Corrections

House Committee on Appropriations

Senate Committee on Judiciary

Senate Committee on Ways & Means

Background:

Statistics from the Washington Sentencing Guidelines Commission 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 the remaining offenders 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 or her sentence in prison and the remainder of his or her sentence in the community while participating in a mandatory alcohol and substance abuse treatment program.

Drug Courts. Drug courts, unlike traditional courts, divert 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, but 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.

Drug courts operate in approximately 12 counties throughout Washington.

Sentencing for Drug-related Crimes. A controlled substance is generally defined as a drug, substance, or immediate precursor that is included in the Uniform Controlled Substance Act and listed in various schedules with regard to its potential for abuse.

Generally, under the Uniform Controlled Substance Act, it is illegal for any person to possess, sell, manufacture, or deliver controlled substances. A person convicted of a controlled substance offense receives a sentence within the standard range for the offense which, under the Sentencing Reform Act (SRA), 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 crime would generally receive a presumptive sentence range of 21 to 27 months in prison.

Sentencing Grid. 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:

Level X (Five years in prison)

- 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.

Level IX (Three years in prison)

- 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.

Level VIII (Two years in prison)

- 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.

Level VII (18 months in prison)

- Involving a minor in drug dealing.

Level VI (13 months in prison)

- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV.

Level V (Nine months in jail)

- Delivery of imitation controlled substance by person 18 or over to person under 18.

Level IV (Six months in jail)

- 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).

Level III (Two months in jail)

- 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.

Level II (Zero - 90 days in jail)

- 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).

Level I (Zero - 60 days in jail)

- 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 offense.

Summary:

The scoring process is revised and incarceration sentences are reduced for certain offenders convicted of heroin and cocaine drug offense, beginning on July 1, 2002. In addition, a new sentencing grid takes effect July 1, 2004, for the sole purpose of sentencing offenders convicted of drug crimes. A portion of the savings resulting from the combination of reduced 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 support services 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; at a minimum, however, the requirements must include the following:

- The offender will benefit from substance abuse treatment;
- The offender has never been convicted of a serious violent or sex offense; and
- The offender is currently not charged or convicted of an offense that involves a firearm, a sex offense, a serious violent offense, or an offense that caused substantial or great bodily harm or death to another person.

By March 1, 2003, the Washington State Institute for Public Policy must report on the cost-effectiveness of existing drug courts in Washington and their impacts on reducing recidivism.

Sentencing for Drug-related Crimes. Effective for crimes committed on or after July 1, 2002, the seriousness level is decreased from a level VIII to a level VII for an offender convicted of a manufacturing, delivering, or possessing with intent to deliver heroin or cocaine when the offender does not have a previous criminal record that includes a sex or serious violent offense. A first time offender convicted of this crime would receive a presumptive sentence range of 15 to 20 months in prison.

Sentencing Grid. An offender convicted of a drug offense committed on or after July 1, 2004, receives a sentence that is calculated using a drug offense sentencing grid instead of the standard SRA 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 offense sentencing grid depending upon the offense.

The seriousness level ranking listed on the drug offense 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:

Level III (51-68 months in prison or DOSA)

- 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.

Level II (12 - 20 months in prison, Drug Court, or DOSA)

- 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.

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).
- Unlawful use of a building for drug purposes.

The new drug offense sentencing grid does not include an entitlement for any defendant to a specific sanction, sentence option, or treatment. Any sentence imposed within the standard range under the drug offense sentencing grid is not appealable.

The Washington State Institute for Public Policy must evaluate the effectiveness of the drug offense sentencing grid in reducing recidivism and its financial impact. A preliminary report to the Legislature is due by December 1, 2007, and a final report is due by December 1, 2008.

Scoring. Triple and double scoring is eliminated for purposes of calculating an offender's score for a drug offense. All drug offenses are counted as one point for each prior adult drug conviction and 0.5 point for each prior juvenile drug conviction, with the exception of cases involving manufacturing methamphetamine and cases where the offender has a previous criminal history that includes a sex or serious violent 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 conviction involving a "manufacturing of methamphetamine" offense.

Joint Select Committee. 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 county chemical dependency treatment provider; 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 must:

- 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 members of the committee must serve without compensation. Committee members will be reimbursed for travel expenses.

The committee 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 and support services for offenders with a chemical dependency problem against whom charges are filed by a prosecuting attorney in Washington and for nonviolent offenders participating in drug courts. No more than 10 percent of the funds may be spent for support services.

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 legislation 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 confined in a state correctional facility, who are receiving a reduced sentence under the new sentencing schemes and who have been assessed with an addiction or a substance abuse problem. Any remaining funds may be used to provide treatment to offenders confined in a state correctional facility 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 amount of savings transferred to the criminal justice treatment account may not exceed a limit of \$8.25 million per fiscal year. Following the first fiscal year in which the amount of savings to be transferred equals or exceeds \$8.25 million, the limit will be increased on an annual basis by the implicit price deflator. Savings in excess of the criminal justice treatment account limit remain in the state general fund.

The DASA, serving as the fiscal agency, must distribute 70 percent of the amount of money 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. The DASA is prohibited from utilizing criminal justice treatment account moneys for administrative expenses until July 1, 2004.

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. 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, a member of the criminal defense bar appointed by the county legislative authority, and a drug court professional if available.

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.

Votes on Final Passage:

House 72 25
Senate 36 11 (Senate amended)
House 71 26 (House concurred)
House 67 30 (House reconsidered)

Effective: June 13, 2002

April 1, 2002 (Sections 1, 4-6, 12, 13, 26, 27)

July 1, 2004 (Sections 7-11, 14-23)

July 1, 2002 (Sections 2, 3)