

HOUSE BILL REPORT

ESSB 5970

As Passed House:

April 10, 2001

Title: An act relating to probation orders.

Brief Description: Revising provisions for probation orders.

Sponsors: By Senate Committee on Judiciary (originally sponsored by Senator Hargrove).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/28/01, 3/30/01 [DP].

Floor Activity:

Passed House: 4/10/01, 95-0.

Brief Summary of Engrossed Substitute Bill

- Authorizes courts to toll the probation term of misdemeanor and gross misdemeanor defendants who fail to appear for any court hearing.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

Staff: Yvonne Walker (786-7841).

Background:

Persons convicted of gross misdemeanor and misdemeanor crimes may have their sentences suspended for a maximum of two years of probation. Previously, courts tolled the two-year period of the suspended sentence when a defendant failed to appear for a required court hearing or to serve a sentence. A recent case from the Court of Appeals, Division III, *Spokane v. Marquette*, has held that orders tolling the probation time due to a defendant's failure to appear are invalid.

Summary of Bill:

District and municipal courts must toll the probation term of misdemeanor and gross misdemeanor defendants who fail to appear for any court hearing. The tolling continues until the defendant appears in court and makes his or her presence known to the court. The statute governing municipal court jurisdiction is also amended to conform to district court provisions allowing a court to modify or revoke a suspended or deferred sentence at any time before an order terminating probation is entered.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Courts and prosecutors have all had the understanding that any time a conviction went to warrant that the two-year period was tolled. However, the Court of Appeals held that courts could not toll a person's probation and restart it again. The two-year period starts at conviction and is suppose to end two years after conviction. The courts of limited jurisdiction would like this ability to toll sentences so offenders do not just hide for two years. This bill ensures that if an offender chooses to ignore the request of the court and, not precluding the offender the opportunity to argue when he or she comes back to court, it offers the court the opportunity to have the offender come back into court and handle his or her legal matters.

Testimony Against: Previously courts acted to toll the probation based on the issuance of a warrant; however, the *Marquette* decision changed that procedure. The *Marquette* court decision found that courts were acting outside of their authority. This act proposes an amendment that allows the justice system to sit on its hands and allows probation to continue forever. Cases could be left open forever.

More and more people are saying that they want courts to act more quickly and as a result of the *Marquette* decision that is currently happening. This bill would promote or allow courts to delay hearings. This bill should have some type of fiscal cost.

Testified: (In support) Rod Fleck, city of Forks; and Judge Peter Lukevich, District and Municipal Court Judges Association.

(Opposed) Janice Holmes, Floris Mikkelson, and Mary Wolneif, Washington Defenders Association, Washington Association of Criminal Defense Lawyers.