

SENATE BILL REPORT

2SHB 2338

As Reported By Senate Committee On:
Judiciary, February 28, 2002
Ways & Means, March 12, 2002

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

Brief Description: Revising sentences for drug offenses.

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

Brief History:

Committee Activity: Judiciary: 2/26/02, 2/28/02 [DPA].
Ways & Means: 3/12/02 [DPA (JUD)].

Brief Summary of Bill

- Manufacture, delivery, or possession with intent to deliver heroin or cocaine is ranked at level VII on the sentencing grid instead of level VIII.
- Prior drug offenses, for other than the manufacture of methamphetamine, are scored as one point instead of three points.
- Savings from the sentencing changes are used for substance abuse treatment and drug courts.
- A new drug offense sentencing grid takes effect in 2004.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Long, McCaslin, Poulsen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Judiciary.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fraser, Kline, Kohl-Welles, Long, Poulsen, Rasmussen, B. Sheldon, Snyder, Spanel and Thibaudeau.

Staff: Bryon Moore (786-7726)

Background: Prior to 1989, the manufacture, delivery or possession with intent to deliver heroin or cocaine (a class B felony) was ranked at level VI on the sentencing grid. In 1989, the ranking for the manufacture, delivery, or possession with intent to deliver heroin or cocaine was increased to level VIII.

The sentences of individual offenders are based on the seriousness of the current offense and their criminal history. Prior convictions typically count as one "point" for the purposes of determining the length of the sentence for the current offense. In 1989, the Legislature provided that if a present conviction is for a drug offense, three points would be counted for each prior adult felony drug offense and two points for each prior juvenile drug offense. For example, if an offender is currently being sentenced for possession of marijuana with intent to deliver and has one prior adult conviction for a drug offense, the single prior conviction is scored as three points rather than one (providing a sentence of nine to 12 months of confinement instead of three to eight months).

Summary of Amended Bill: Manufacture, delivery, or possession with intent to deliver heroin or cocaine is ranked at level VII on the sentencing grid (15 to 20 months for a first offense). Prior drug offenses, for other than the manufacture of methamphetamine, are scored as one point when determining the sentence for all subsequent drug offenses. Offenders with a criminal history that includes serious violent or sex offenses are not eligible for the drug offense sentencing changes.

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 sentence lengths for drug offenses and any other amount transferred or appropriated into the account. Funds in the account may be only spent for substance abuse treatment (defined as services critical to successful completion of treatment, not including housing, vocational training, or mental health counseling) and treatment support (defined as necessary transportation and day care expenses) for offenders filed upon by a prosecuting attorney in Washington and for drug courts.

The Department of Corrections (DOC), the Sentencing Guidelines Commission and the Caseload Forecast Council develop a methodology for calculating the projected biennial savings resulting from the reduced drug sentencing. 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 modifies or rejects it.

DOC must use the approved methodology to calculate the savings and reports the dollar amount of savings to the State Treasurer, the Office of Financial Management and the Legislature. Seventy-five percent of the savings amount reported by DOC is transferred to the criminal justice treatment account. The annual amount transferred to the account is limited to \$8.25 million per year, adjusted annually by the implicit price deflator. Up to 10% of this amount may be used to provide treatment support.

The remaining 25 percent of the savings amount reported is transferred to the violence reduction and drug enforcement account to be used exclusively for drug treatment for persons receiving reduced sentences. The transfers made pursuant to this act are made exempt from the Initiative 601 provision requiring a lowering of the expenditure limit.

Seventy percent of the criminal justice account funds is distributed to counties pursuant to a distribution formula. The Division of Alcohol and Substance Abuse (DASA), in consultation with a broad group of parties with expertise, must establish a fair and reasonable methodology for distribution. County plans submitted for the expenditure of formula funds must be approved by the panel.

The remaining 30 percent is distributed as grants for the purpose of treating offenders against whom charges are filed by a county prosecuting attorney. DASA appoints a panel of representatives that 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, the county prosecutor, county sheriff, county superior court, county drug court professional, and a substance abuse treatment provider appointed by the county legislative authority jointly submit a plan for disposition of all the funds provided from the criminal justice treatment account within that county. The plan must be approved by the county legislative authority and must be used solely to provide approved alcohol and substance abuse treatment and treatment support. Counties are encouraged to consider regional agreements. Any county found not to have used the funds appropriately must repay such amounts.

A new sentencing grid that includes only controlled substance offenses takes effect on July 1, 2004, and applies to crimes committed after that time. A joint select committee on the drug offense sentencing grid is established. The committee makes recommendations to the Legislature and Governor regarding the drug offense sentencing grid by July 1, 2003, and ceases to exist on December 31, 2003.

The Washington State Institute for Public Policy evaluates the effectiveness of the new drug courts by March 2003. The Washington State Institute for Public Policy evaluates the effectiveness of the new drug offense sentencing grid with a preliminary report by December 1, 2007, and a final report by December 1, 2008.

All current sentence enhancements and sentencing rules remain in effect for crimes moved to the new grid. Offenders on community custody are subject to sanctions if they fail to participate in treatment. Offenders who receive the drug offender sentencing alternative may have their release revoked for wilful failure to participate in treatment.

Minimum requirements for participation of offenders in drug courts are adopted. Criminal defendants are not entitled to any specific sentencing option, sanction, alternative or substance abuse treatment.

Amended Bill Compared to Original Bill: People with a criminal history that includes sex or serious violent offenses do not qualify for reduced sentences. Treatment and treatment support services are defined and money in the Criminal Justice Treatment Account (CJTA) may be used for them. The CJTA is capped at \$8.25 million. The Washington State Institute for Public Policy performs two studies. Admission to drug court is accomplished by the same mechanism as is used today.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: There is strong bipartisan support for this bill in both the House and the Senate. The bill provides for a balanced response to the drug problem. It is good public policy and good fiscal policy. Drug courts save people's lives by providing structure and motivation to get off drugs and become productive citizens. Without this mechanism for drug court funding, treatment opportunities will not become available statewide.

Testimony Against: None

Testified: Representative Kagi; Joseph Lehman, DOC; Melanie Stewart, TASC; Judge Mike Trickey, WSADCP; Ken Stark, DSHS-DASA; Tom McBride, WAPA; Lillie Munson, Clark County TASC; Martha Hardin, Superior Court Judges' Assn.; Dick Van Wagenen, Governor's Policy Office; Larry Erickson, WASPC; Sara Jane Siegfried, Assn. of Alcoholism and Addiction Programs.