

SENATE BILL REPORT

SB 6361

As Reported By Senate Committee On:
Judiciary, February 7, 2002

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

Brief Description: Revising sentences for drug offenses.

Sponsors: Senators Kline, Long, Kohl-Welles, Hargrove, McCaslin and Oke.

Brief History:

Committee Activity: Judiciary: 1/24/02, 2/7/02 [DPS].

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.
- Offenders with a history of serious violent or sex offenses are not eligible for the sentencing reductions.
- 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: That Substitute Senate Bill No. 6361 be substituted therefor, and the substitute bill do pass.

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

Staff: Aldo Melchiori (786-7439)

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 twelve months of confinement instead of three to eight months).

Summary of Substitute 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 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 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 uses 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 are transferred to the criminal justice treatment account. The remaining 25 percent is transferred to the violence reduction and drug enforcement account to be used exclusively for 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. DASA, in consultation with a broad group of parties with expertise, establishes methodology for distribution. County plans submitted for the expenditure of formula funds must be approved by the panel.

The remaining 30 percent are 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 approves 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, county superior court, 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. 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 offense sentencing grid.

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 willful failure to participate in treatment.

Minimum requirements for participation of offenders in drug courts are adopted. The court may admit a defendant into drug court based upon its own motion or the motion of the state or offender. Criminal defendants are not entitled to any specific sentencing option or substance abuse treatment.

Substitute Bill Compared to Original Bill: Offenders with a criminal history that includes serious violent or sex offenses are not eligible for the drug offense sentencing changes. Drug courts may not admit offenders that do not meet the minimum criteria. Funds can be used to provide drug court support services as well as direct treatment. The Washington State Institute for Public Policy evaluates the effectiveness of the drug offense sentencing grid.

Appropriation: None.

Fiscal Note: New fiscal note requested on January 16, 2002.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The policy will work because the resource is created before the policy that creates the fiscal need takes full effect. The policy is consistent with the evidence that treatment works to save people's lives and save money throughout society by reducing overall crime. We need to stop the rotating door through the courts and jails. Involuntary treatment works even better than voluntary treatment because of the sanctions for failure. The sanctions distinguish those who deal for profit or to minors from those who deal drugs to support their own addiction. The public is far ahead of the present political culture and will support tough laws with a chance for redemption.

Testimony Against: The bill does not go far enough. Drugs must be decriminalized; these people need treatment not imprisonment. Incarceration of drug offenders is a waste of taxpayer money.

Testified: PRO: Joseph Lehman, DOC; Sarajane Siegfriedt, Association of Alcoholism and Addiction Programs; Judge Rick Strophy, Washington Association of Drug Court Professionals, Washington Association of Superior Court Judges; Kevin Giackin-Loley,

WSSC; Dave Boerner, Sentencing Guidelines Commission; Norm Maleng, King County Prosecuting Attorney; Tom McBride, WAPA; Dan Merkle; Kimberly Whitten, TASC; Priscilla Lisicich, Governor's Council on Substance Abuse; Jerry Sheehan, ACLU; Larry Erickson, WASPC; Greg Bower, AAP; Alan Mountson-Venning, Friends Committee on Washington State Public Policy; CON: Jeff Gilmore.