

HOUSE BILL REPORT

HB 2967

As Reported by House Committee On: Criminal Justice & Corrections

Title: An act relating to responding to drug crimes by providing increased support for enforcement and prosecution of drug crimes, authorizing the use of drug courts by juvenile courts, clarifying provisions related to sentence enhancements for certain drug crimes, modifying earned early release provisions related to offenders sentenced under RCW 9.94A.660, improving judges' abilities to make informed sentencing decisions, and undertaking studies related to criminal justice.

Brief Description: Responding to drug crimes.

Sponsors: Representatives Green, Sells, Appleton, McCoy, P. Sullivan, Kenney and Takko.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/20/06 [DPS].

Brief Summary of Substitute Bill

- Appropriates \$4 million from the General Fund to the Washington State Patrol for multi-jurisdictional task forces and drug prosecution assistance.
- Expands the term "drug court" to include courts whose jurisdiction is conferred over juvenile offenders.
- Requires the Department of Community, Trade, and Economic Development to review various funding sources to determine whether funding is adequate to accomplish the mission of the meth action teams.
- Clarifies that all sentence enhancements relating to violations of the Uniform Controlled Substance Act in drug-free zones are to be run consecutively (instead of concurrently) to all other sentencing provisions.
- Provides that offenders participating in the Drug Offender Sentencing Alternative (DOSA) program are eligible for 33 percent (instead of 50 percent) of earned release time.

- Requires the courts to request chemical dependency screening reports before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where it is found that the offender has a chemical dependency that contributed to his or her offense.
- Requires the courts to order pre-sentence reports for all felony offenders.
- Requires the Washington State Institute for Public Policy (WSIPP) to study criminal sentencing provisions in other states for all crimes involving methamphetamine.
- Requires the WSIPP to conduct a study of the DOSA program to determine its impact on recidivism.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

Staff: Yvonne Walker (786-7841).

Background:

I. 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.

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 non-violent, 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.

II. Department of Community, Trade, and Economic Development (DCTED). The DCTED is responsible for assisting in community and economic development in the state; providing technical and financial assistance to local governments, businesses, and community-based organizations; soliciting private and federal grants for economic and community development programs; and conducting research and analysis to support economic and community development efforts.

III. Drug Free School Zones. If an offender is sentenced for committing certain violations of the Uniform Control Substance Act (UCSA) in a drug free protected zone, a two-year sentence

enhancement may be added to the offender's sentence. A person is subject to enhanced sentencing if he or she manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver, a controlled substance in public areas such as schools, school buses, school bus stops, school grounds, public parks, public housing projects designated as drug free zones, public transit vehicles, public transit stop shelters, or civic centers designated as a drug free zones. In addition, the maximum imprisonment sentence and fine may be increased up to double the amount imposed for the underlying conviction.

In *State v. Jacobs*, 120 Wn. App. 1059 (2004), the defendants challenged the statutory language regarding the sentence enhancements for violations of the UCSA on the grounds that they believed multiple sentence enhancements should be applied concurrently instead of consecutively. The courts concluded that the statutory language appeared ambiguous and as a result, under the rule of lenity, it was ruled that sentencing courts should apply multiple sentencing enhancements concurrently to each other.

IV. Earned Early Release Time (Good Time). An offender convicted of a serious violent offense or a class A felony sex offense, on or after July 1, 2003, may obtain earned release time. Such an offender may not have his or her term reduced by more than 10 percent via earned release time.

Certain other offenders can have their confinement reduced by up to 50 percent. The Department of Corrections (DOC) must perform a risk assessment of eligible offenders and classify them into four risk groups. An offender may have his or her term of confinement reduced by up to 50 percent via earned early release time if he or she:

- is classified in one of the two lowest risk categories;
- is confined for an offense other than a violent offense; a sex offense; manufacture, delivery, or possession with intent to deliver methamphetamine (or an attempt, solicitation, or conspiracy to do so); delivery of a controlled substance to a minor (or an attempt, solicitation, or conspiracy to do so); a crime against persons; a felony domestic violence offense; or residential burglary; and
- has no prior conviction for any of these offenses.

An offender incarcerated for any other offense may not have his or her term of confinement reduced by more than 33 percent via earned release time.

Offenders participating in the Drug Offender Sentencing Alternative (DOSA) program are eligible for 50 percent earned release time. The DOSA is an alternative sentencing program that allows a court to waive imposition of an offender's sentence within the standard sentencing range and instead the offender is required to complete a substance abuse assessment and receive, within available resources, substance abuse treatment and counseling.

V. Sentencing Hearing. Before imposing a sentence upon a defendant, the court must conduct a sentencing hearing. As part of that sentencing hearing, the court must order the DOC to complete a chemical dependency screening report before imposing a sentence only if the defendant has been convicted of a violation (or a criminal solicitation to commit a

violation) of the UCSA. Generally the reports are ordered any time the court finds that the offender has a chemical dependency that contributed to his or her offense.

In addition, the court must order the DOC to complete a pre-sentence report before imposing a sentence if the defendant has been convicted of a felony sex offense. The DOC must give priority to completing those pre-sentence investigations that are for sex offenders.

VI. Washington State Institute for Public Policy (WSIPP). The WSIPP carries out non-partisan research at the direction of the Legislature. Various studies over the years have centered around the following issues: education, criminal justice, welfare, children and adult services, health, utilities, and general government. Fiscal and administrative services for the WSIPP are provided by The Evergreen State College.

Summary of Substitute Bill:

A sum of \$4 million from the General Fund is appropriated to the Washington State Patrol for the purpose of providing funding for multi-jurisdictional drug task forces and local government drug prosecution assistance.

I. Drug Courts. The term "drug court" is expanded to include those courts whose jurisdiction includes juvenile offenders.

II. Department of Community, Trade, and Economic Development (DCTED). The DCTED is charged with reviewing federal, state, and local funding sources and levels available to local methamphetamine action teams through the Washington State Methamphetamine Initiative to determine whether funding is adequate to accomplish the mission of the methamphetamine action teams. The DCTED must also review the funding levels for individual drug task forces in Washington to determine if they require additional resources to successfully interdict drug trafficking organizations and clandestine labs statewide. A report on their findings and recommendations must be submitted to the Legislature by November 1, 2006.

III. Drug-Free School Zones. Statutory language is clarified to specify that all sentence enhancements relating to violations of the UCSA in drug-free zones are to be run consecutively to all other sentencing provisions for all sentences under the Sentencing Reform Act.

IV. Earned Early Release Time (Good Time). Offenders participating in the DOSA program are eligible for 33 percent earned release time instead of 50 percent.

V. Sentencing Hearing. The court must order the DOC to complete a chemical dependency screening report before imposing a sentence upon a defendant that has been convicted of "any" type of a felony where the court finds that the offender has a chemical dependency that contributed to his or her offense. The court must also order the DOC to complete a pre-sentence report for all felony offenders. However, the DOC must continue to give priority to completing those pre-sentence investigations that are for sex offenders.

VI. Washington State Institute for Public Policy (WSIPP). The WSIPP must conduct a study of criminal sentencing provisions of neighboring states for all crimes involving methamphetamine. The report must include any criminal sentencing increases necessary under Washington law to reduce or remove any incentives methamphetamine traffickers and manufacturers may have to locate in Washington. The report must be completed and submitted to the Legislature by January 1, 2007.

The WSIPP must also conduct a study of the DOSA program to determine its impact on recidivism. The WSIPP must study the success rate of the sentencing alternative for different types of crimes and whether offenders who received substance abuse treatment while in confinement were more or less successful than offenders who received treatment in the community or received no treatment. The WSIPP must report its findings to the Legislature by January 1, 2007.

Substitute Bill Compared to Original Bill:

The intent section of the bill stating that the Legislature intends to provide a minimum of \$4 million for multi-jurisdictional drug task forces and drug prosecution is eliminated. Instead a direct \$4 million appropriation from the General Fund to the Washington State Patrol is created for the same purpose.

The intent section and provisions providing a minimum of \$1.125 million annually, to be divided equally between newly created three pilot enforcement areas for a period of four fiscal years, is eliminated.

Appropriation: A sum of \$4 million from the General Fund is appropriated to the Washington State Patrol for the purpose of providing funding for multi-jurisdictional drug task forces and local government drug prosecution assistance.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This bill will help in proactive drug enforcement. Drug enforcement affects the lives of community people otherwise communities would become overrun with drug dealers. This bill will help communities that cannot afford proactive drug enforcement. In addition, there are several jurisdictions in this state that do not receive any federal funding. This bill will help in a holistic statewide drug interdiction strategy.

The pilot programs that are being created in this bill are a nice bonus in that they will provide funding for not only law enforcement officers but also for prosecuting attorneys and the court clerks.

(Neutral) Many of the drug market areas in Seattle have not changed in the last 20 years. Although there is great concern over methamphetamine, it is unclear whether this bill covers

crack or cocaine. In addition, there is no funding set aside for the treatment of drug offenders. Lastly, this bill is better than nothing but it is unclear how this bill will affect African Americans.

(With concerns) A concern in the bill that one should be aware of, is the mandating of chemical dependency screenings that the DOC is required to do on offenders. Sufficient funding should be given to the DOC so that these screenings can be completed. In addition, the bill also requires the courts to order pre-sentence reports for all felony offenders and not just sex offenders. Language should be added to the bill that allows the court to waive the pre-sentence reports at their discretion. Additionally, funding should be made available to the DOC to ensure that the agency is able to complete the pre-sentence reports that are required in the legislation. Some funding should also be diverted to drug courts for treating offenders in order to reduce recidivism.

The 24-month school zone enhancement provision in the bill is something that is not evenly enforced even under current law throughout the state. Lastly, the changing of the earned early release time credits for the DOSA program may discourage offenders from participating in the program.

Testimony Against: None.

Persons Testifying: (In support) Sheriff Mike Whelan, Grays Harbor County; Sheriff John Didion, Pacific County; and Steve Clem, Douglas County Prosecuting Attorney.

(Neutral) Jon E. Ostlund, Washington Defenders Association.

(With concerns) Addie Jones, Blacks, and Washington Bar Association for Drug Policy Changes; and Jean Wessman, Washington Association of Counties.

Persons Signed In To Testify But Not Testifying: None.