

SENATE BILL REPORT

SB 5891

As of April 27, 2011

Title: An act relating to criminal justice.

Brief Description: Relating to criminal justice.

Sponsors: Senator Murray.

Brief History:

Committee Activity: Ways & Means:

Brief Summary of Bill

- Eliminates the Department of Corrections (DOC) supervision of jail and court offenders except offenders who are at a high risk to reoffend for a violent offense, offenders who have received an alternative sentence and who are therefore receiving treatment, and offenders with a history of domestic violence.
- Requires DOC to release an offender if the offender has reached his or her earned early release date and the offender has less than one year to serve of his or her sentenced term of confinement.
- Reduces the maximum term of supervision for offenders sentenced under a first time offender waiver from 24 months to 12 months.
- Allows DOC to charge a supervision intake fee, not to exceed \$600, rather than a monthly assessment.
- Transfers the Indeterminate Sentence Review Board and some functions of the Sentence Guidelines Commission (SGC) to DOC; the SGC body is an independent entity in dormant status that may be convened by the Legislature or the Governor; the Sex Offender Policy Board is transferred to the Office of Financial Management as a dormant entity.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Richard Ramsey (786-7412) and Shani Bauer (786-7468)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Offender Release and Supervision. Inmates may shorten their sentence time, if they display good behavior, through a program called earned early release. Depending on the crime committed, date of conviction, and the offenders' risk classification, offenders may get from 10-33 percent time off their sentence.

Offenders who are convicted of a sex offense, a violent offense, a crime against persons, or a drug crime are eligible to be released to community custody in lieu of earned early release. The Department of Corrections (DOC) may deny transfer of the offender to community custody if the offender does not have an approved release plan. In the release plan, the offender must propose a residence location and living arrangements. If DOC finds that the proposed plan may violate the offender's conditions of sentence, place the offender at risk to reoffend, or compromise community safety, DOC will not approve the offender's release plan. In this case, the offender will remain incarcerated until a viable release plan is found or the offender reaches the end of his or her sentence. DOC may provide rental vouchers to an offender for a period up to three months, if rental assistance will enable the offender to have an approved release plan.

DOC is currently required to supervise felony offenders sentenced to community custody who are classified at a high risk to reoffend; all sex offenders; all dangerously mentally ill offenders; all offenders with an indeterminate sentence; all offenders sentenced to Drug Offender Sentencing Alternative, Special Sex Offender Sentencing Alternative, and first time offender waiver (FTOW); and all offenders required to be supervised under the Interstate Compact. DOC must also supervise misdemeanor offenders who have been sentenced to probation by a superior court and who have been convicted of a sex offense, including a failure to register; and those convicted of fourth degree assault or violation of a domestic violence court order and who have a prior conviction.

Approximately 60 percent of the offenders supervised by DOC are sentenced to confinement of one year or less and therefore do not serve time in prison.

Cost of Supervision. Assessments for Supervision of Felony Offenders. DOC may impose a monthly supervision assessment on a felony offender under supervision, which is considered payment toward providing supervision. The assessment is \$15 per month for routine parole and up to \$50 per month for intensive parole supervision. The assessment is imposed for the duration of supervision and is deposited in the Cost of Supervision Fund. Expenditures from the Cost of Supervision Fund are made for supporting the collection of legal financial obligations.

DOC may exempt an offender from payment of all or part of the assessment if the offender has diligently attempted but has been unable to obtain employment; the offender is a student; the offender has an employment handicap; the offender's age prevents employment; the assessment would create an undue hardship because the offender is responsible for supporting dependents; or other extenuating circumstances exist.

Assessments for Supervision of Misdemeanant Probationers. When an offender convicted of a misdemeanor or gross misdemeanor is placed on probation and supervised by either DOC or a county probation department, DOC or the probation department may collect a monthly

assessment up to \$100 per month from the offender. The assessment is imposed for the duration of probation.

Application for Interstate Transfer. DOC processes applications for transfer of offenders under the Interstate Compact for Adult Offender Supervision and may charge offenders a reasonable fee for processing the application.

First Time Offender Waiver (FTOW). An offender is eligible to receive a sentencing alternative of a FTOW if the person:

- has never been convicted of a felony or participated in a program of deferred prosecution for a felony; and
- is not currently convicted of:
 1. a violent offense or sex offense;
 2. manufacturing, delivery, or sale of certain controlled substances; or
 3. felony driving under the influence.

In sentencing a first-time offender, the court may waive imposition of the standard sentence and impose a sentence of up to 90 days confinement and community custody of up to one year, or up to 24 months if treatment is also ordered.

In 2010 the court sentenced 1469 offenders to an FTOW. Approximately 41 percent of the offenders received a sentence of confinement within the standard sentence range. Three hundred fifty-five were sentenced to a 12-month term of community custody and 1021 were sentenced to a 24-month term of community custody. DOC currently supervises 2550 first-time offenders.

Indeterminate Sentence Review Board (ISRB). Prior to 1984 sentences imposed for adult felonies in Washington were indeterminate. Courts had wide discretion over whether or not to impose a prison sentence and the length of any sentence. The Board of Prison Terms and Paroles then decided when or whether to release an offender within the statutory maximum sentence period. Indeterminate sentencing is still in effect for a small number of prison inmates who committed crimes before July 1, 1984. The Board of Prison Terms and Paroles was re-designated as ISRB which has continuing responsibility to set the release dates for those offenders.

In addition to pre-1984 offenders, ISRB also determines whether to release sex offenders who committed their crimes after September 1, 2001, and who were sentenced to a determinate plus sentence including a minimum and maximum term of incarceration. ISRB exists as an independent entity in current law, consisting of a chair and four other members, each of whom is appointed by the Governor.

Sentencing Guidelines Commission (SGC) and the Sex Offender Policy Board. The Legislature established SGC in 1981 and directed it to recommend a determinate sentencing system for adult felonies. The principal goal of the new sentencing guidelines system was to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Sentences were to be determined by the seriousness of the offense and by the criminal record of the offender. SGC completed the original adult felony sentencing grid in 1982, which was subsequently enacted into law and applied to crimes committed after

July 1, 1984. In 1996 the Legislature directed SGC to assume the functions of the Juvenile Disposition Standards Commission, serving similar functions with regard to juvenile sentencing.

SGC is organized as a separate entity with membership appointed by the Governor. The continuing duties of SGC include evaluating and monitoring adult and juvenile sentencing policies and practices and recommending modifications to the Governor and the Legislature and serving as a clearinghouse and information center on adult and juvenile sentencing.

In 2008 the Legislature created the Sex Offender Policy Board (SOPB) to promote a coordinated and integrated response to sex offender management. SOPB is organized as an independent entity, staffed and maintained by SGC. SOPB responds to requests from legislators and conducts case reviews of sex offense incidents that occur within the state.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): Offender Release and Supervision. It is the Legislature's intent to make strategic correctional cost reductions while investing in evidence based programming with the goal of no net increase in the prison caseload forecast.

DOC supervision of jail and court offenders is eliminated except for those offenders:

- assessed at a high risk to reoffend for a violent offense;
- sentenced to an alternative sentence under a FTOW, drug offender sentencing alternative, special sex offender sentencing alternative, or parenting alternative and therefore receiving treatment; and
- with a history of committing domestic violence offenses.

DOC's discretion to hold an offender past his or her earned early release date if the offender has less than one year to serve of his or her sentenced term of confinement is eliminated. An offender is only required to have an approved release plan if there is greater than one year left of his or her sentenced term of confinement. DOC may still provide housing vouchers to facilitate an offender's transition to earned early release.

In sentencing a first-time offender, the court may impose up to six months of community custody or up to 12 months of community custody if treatment is also ordered.

Cost of Supervision. *Intake Fee for Supervision of Offenders*. Both felony and misdemeanor offenders under DOC supervision must pay a supervision intake fee, which is considered payment toward the cost of establishing supervision. The fee is imposed after the offender is determined to be eligible for supervision. For an offender whose crime was committed on or after July 1, 2011, the fee is \$400-\$600 and is assessed for each judgment and sentence imposed for which supervision is required. For an offender whose crime was committed before July 1, 2011, the monthly supervision assessment is converted to a one-time fee. The fee is based on the monthly rate and the number of months of supervision left, but may not exceed \$600.

Application for Interstate Transfer. DOC may charge a reasonable fee set by rule for processing an offender's application for out-of-state transfer of supervision under the

Interstate Compact for Adult Offender Supervision. The fee is deposited in the Cost of Supervision Fund.

ISRB. ISRB is created within DOC. DOC must provide administrative and staffing support to ISRB. DOC may employ a senior administrative officer and other personnel as necessary to assist ISRB in carrying out its duties. The property and employees of ISRB are transferred to DOC.

Sentencing Guidelines Commission and Related Duties. SGC is created as an advisory agency and may only meet only for such purposes as determined by the Governor and the Legislature. DOC will now serve as the clearinghouse and information center for adult and juvenile sentencing and must annually produce a statistical summary of adult felony sentencing and juvenile dispositions. DOC must also publish and maintain the adult felony sentencing manual. DOC is not liable for errors or omissions in the manual or for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual.

DOC assumes full responsibility for administering the interstate compact for adult offender supervision in the state. SOPB is established within the Office of Financial Management as a dormant entity that may be convened at the request of the Governor or the Legislature.

Miscellaneous. By January 1, 2012, DOC must implement the provisions of this act, including recalculating community custody terms and release dates for offenders in accordance with the provisions of this act. This act applies to persons convicted before, on, or after the effective date of this section.

Appropriation: None.

Fiscal Note: Requested on April 27, 2011.

Committee/Commission/Task Force Created: No.

Effective Date: Sections 1-9 of the bill contain an emergency clause and take effect immediately; sections 10-40 are effective July 1, 2011.