

SENATE BILL REPORT

ESSB 5892

As Passed Senate, April 24, 2013

Title: An act relating to reducing corrections costs.

Brief Description: Reducing corrections costs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove and Kline).

Brief History:

Committee Activity: Ways & Means: 4/10/13, 4/11/13 [DPS].

Passed Senate: 4/24/13, 42-4.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5892 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Braun, Dammeier, Fraser, Hasegawa, Hatfield, Keiser, Kohl-Welles, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

Staff: Carma Matti-Jackson (786-7454)

Background: Washington's sentencing system is based on a determinate sentencing model to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences and penalties. Generally, an offender who is convicted and receives a sentence of confinement greater than one year must serve that term of confinement in a state correctional facility (prison). An offender who is convicted and receives a sentence of confinement of less than one year must serve that term of confinement in a county correctional facility (jail). An offender's sentence may be reduced by earned release time earned through "good time," defined as good behavior and good performance. An offender can accumulate earned release time while serving a sentence and during pre-sentence incarceration.

Drug offenses committed on or after July 1, 2003, are divided into three seriousness levels and sentenced according to the drug grid. Offenders sentenced for Seriousness Level 1 Drug Offenses have a current offense of one of the following:

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- possession or forged prescription of a controlled substance, legend drug, or marijuana;
- manufacturing, delivering, or possession with intent to deliver marijuana; or
- using a building for drug purposes.

For an offender who has a criminal history that includes three to five prior felony offenses, the court has the discretion to impose a sentence of between 6-18 months. The result is that the court may sentence the offender to either jail or prison for the same offense. This discretionary placement does not occur at any other seriousness level and for no other completed criminal offense.

A defendant who is charged with a crime and is awaiting trial or sentencing is detained in jail, unless they are released on bail. If the individual is found guilty and receives a sentence greater than one year, the time spent in jail detainment is included in the calculations for the offender's earned release date. Because of this, an offender may spend very little time in a state correctional facility. For example, an offender who was sentenced to 12 months may have served six months pre-trial and receive 33 percent or four months off for good time. This offender would spend no more than 60 days in a prison.

Upon booking an offender into a jail, general information concerning the inmate's ability to pay for medical care is identified. To the extent that the offender is unable to be financially responsible for medical care, the jail is responsible to pay for the offender's health care costs. Rates charged to jails for offender health care are negotiated locally, allowing differential payments to be made for the same health services depending on where the offender is housed. Necessary medical services cannot be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility.

Summary of Engrossed Substitute Bill: The Drug Sentencing Grid is modified so that any offender who commits a Seriousness Level 1 Drug offense and has a criminal history score within the range of three to five, will serve their sentence in jail unless an exceptional sentence is imposed.

Subject to appropriation, the Department of Corrections (DOC) must contract with local jails to house short-term offenders as determined in the annual operating appropriations act. Rented capacity for short-term offenders cannot exceed appropriations specifically for this purpose.

Low-risk and non-sex offenders who qualify and who are entering the last 12 months of their prison sentence may earn an additional 30 days off their sentence by choosing and successfully completing a program from a DOC-approved list. The program chosen must be one not previously attempted or completed by the offender. The offender must also remain infraction free and comply with the requirements in their reentry program or the 30-day earned release credit is revoked for the duration of the offender's sentence.

Rates paid by jails for offender health care are standardized in payment methodology and may not be greater than the amount payable under the Medicaid reimbursement. Hospitals licensed and regulated by the Department of Health must, as a condition of licensure, contract with jails for inpatient, outpatient, and ancillary services. At their own expense, jails

may contract with DOC to participate in the federally certified statewide Medicaid payment processing system in Washington. For counties where jails have a single hospital available and that are also the location of a prison that houses 1500 offenders or more, DOC must pay the medical cost difference between the amount payable under the Medicaid reimbursement and the contracted amount agreed to between the jails and the hospital.

Appropriation: None

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Sections 1, 2, 4, and 5 take effect July 1, 2013. Section 3 takes effect September 1, 2013. Section 6 and 7 take effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: CON: The modification to the Drug Sentencing Grid is not a cost savings, but rather it is a cost shift. The earned-release program is on top of our current early-release program. Offenders can already get one-third of their sentence removed by being good and participating in programming. This additional earned-release program does not control for risk. This bill has costs and savings for counties, but in the aggregate we believe this has negative fiscal consequences for the counties. We appreciate the savings from the policy on offender health care rates.

OTHER: Instead of enacting this policy as a means of delaying opening prison units, consider renting beds from your local jails. A number of jails have capacity to house offenders during the last part of their sentence. This bill provides only a modest increase on rented jail beds when offenders would otherwise enter prison. The counties and sheriffs appreciate that the bill requires DOC to contract with local jails to house short-term offenders; however, the budget assumes a payment of \$75 per offender, per day, including medical which is too low. The violator rate of \$85 per day with the ability to charge additional for medical is a more appropriate rate. The counties appreciate the realignment of our medical costs which is nearly identical to what the state enacted for itself last session. We appreciate the rental of jail beds, but would like more flexible arrangements that are based on long-term leases for fixed costs. In discussions with DOC, Yakima County expressed a willingness to bid a 300 bed local facility at \$60 per day to include medical and mental health care. The state should utilize county facilities rather than constructing new capacity.

Persons Testifying: CON: Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Tom McBride, WA Assn. of Prosecuting Attorneys; Brian Enslow, WA State Assn. of Counties.

OTHER: James McMahan, WA Assn. of County Officials; Genesee Adkins, King County; Briahna Taylor, Yakima County.