

SENATE BILL REPORT

2ESSB 5892

As Amended by House, June 27, 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.

Second Special Session: Passed Senate: 6/23/13, 38-10.

Passed House: 6/27/13, 55-36.

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.

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.

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:

- 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 detention 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 Second 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.

When an offender is transferred from a county jail facility to the Department of Corrections (DOC), the county jail facility must certify to DOC the amount of time spent in custody and the number of days of early release credits lost or not earned. In calculating an offender's early release date, DOC must apply the same rate of early release to pre-sentence time served that is applicable to the offender's time served in the DOC institution, less any days certified by the jail facility as lost or not earned. DOC must recalculate the earned release date for any offender currently serving a term of incarceration under DOC custody, consistent with this change.

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. In a county where (1) the jail has a single hospital available and the county is also the location of a prison that houses more than 1500 offenders; or (2) the jail has two hospitals available and the county is also the location of a prison that houses more than 2000 offenders, 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, and 5 through 7 take effect July 1, 2013. Sections 3 and 4 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.

House Amendment(s): Provisions were removed that limited medical rates paid by jails at the Medicaid reimbursement level for hospital services and a requirement for the Department of

Corrections (DOC) to pay the difference between the new lower rate and the previous rates paid for hospitals in certain counties. The DOC is required to report to the Legislature on the effects of modifications to the drug sentencing grid. The modifications to the drug sentencing grid expire July 1, 2018.