

# HOUSE BILL REPORT

## HB 2270

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### As Reported by House Committee On: Appropriations

**Title:** An act relating to building safer communities in Washington by modifying sentencing laws related to property crimes and other crimes and implementing recommendations of the Washington state justice reinvestment task force.

**Brief Description:** Modifying sentencing laws related to property crimes and other crimes and implementing recommendations of the Washington state justice reinvestment task force.

**Sponsors:** Representatives Hudgins and Walkinshaw.

#### **Brief History:**

##### **Committee Activity:**

Appropriations: 6/22/15, 6/23/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Creates a new felony property offense sentencing grid with reduced standard ranges.
- Imposes 12 months of community custody for a felony property offense when the offender has an offender score of two or more.
- Limits the length of time the Department of Corrections (DOC) is authorized to supervise an offender on community custody to the duration ordered by the court or specified by statute.
- Authorizes the DOC to award positive achievement time to offenders who are in compliance with supervision terms, which may reduce their period of community supervision.
- Requires the Sentencing Guidelines Commission to review and report to the Legislature on: (1) property crime rates; (2) impacts on offenders sentenced under the new property crime grid; (3) recidivism rates; and (4) the law enforcement grant program.
- Creates a law enforcement grant program to be administered by the Department of Commerce.
- Directs the DOC to hire a consultant to perform a comprehensive workload study of their community corrections division.

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*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.*

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Chandler, Ranking Minority Member; Buys, Condotta, Dent, Haler, Harris, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Wilcox, Assistant Ranking Minority Member.

**Staff:** Yvonne Walker (786-7841) and Rachelle Harris (786-7137).

### **Background:**

#### Felony Sentencing.

A sentence imposed for a felony crime depends on the severity or seriousness level of the offense and the defendant's offender score. Felony crimes are separated into 16 different seriousness levels. The offender score may vary from zero to nine plus points depending on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community custody status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

The standard sentence range for any offense that is not a drug offense is established by referring to the standard sentencing grid. For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. Below is the current sentencing grid for seriousness levels one through four.

Serious Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9 or more
4	3-9 months	6-12 months	12+-14 months	13-17 months	15-20 months	22-29 months	33-43 months	43-57 months	53-70 months	63-84 months
3	1-3 months	3-8 months	4-12 months	9-12 months	12+-16 months	17-22 months	22-29 months	33-43 months	43-57 months	51-68 months
2	0-90 days	2-6 months	3-9 months	4-12 months	12+-14 months	14-18 months	17-22 months	22-29 months	33-43 months	43-57 months
1	0-60 days	0-90 days	2-5 months	2-6 months	3-8 months	4-12 months	12+-14 months	14-18 months	17-22 months	22-29 months

Offenders convicted of the following categories of offenses may also receive a term of community custody as part of their sentence:

- sex offenses;
- violent offenses;
- crimes against persons;
- certain drug-related offenses;
- felony violation of Failure to Register as a Sex Offender;
- serious violent offenses; and
- Unlawful Possession of a Firearm where the offender is a criminal street gang member/associate.

#### Length of Community Custody.

A sentencing court imposing a term of community custody fixes the term according to statutory provisions. If an offender is sentenced to the custody of the Department of Corrections (DOC) for a certain specified offense, the sentencing court must impose a fixed term of community custody. For example, an offender convicted of certain sex offenses or a serious violent offense must be sentenced to serve three years of community custody. For violent offenses not considered serious violent offenses, an offender must be sentenced to serve 18 months of community custody. For a number of other offenses, there is a required one-year period of community custody. If an offender is sentenced to a term of confinement for one year or less for a certain offense (such as a sex or violent offense), then the court has discretion to impose up to one year of community custody. An offender may serve a longer period of community custody than was ordered, however, if the offender will be supervised by the DOC and earns early release credits for good behavior and good performance which are required to be converted by the DOC to additional community custody time. The DOC is not permitted to reduce the length of time of community custody based on good behavior of an offender while on community custody.

#### Sentencing Guidelines Commission.

The Sentencing Guidelines Commission (SGC) was created by the Legislature in 1981 as part of the Sentencing Reform Act. The SGC serves as an independent body statutorily required to evaluate and monitor adult and juvenile sentencing policies and practices and make recommendations to the Governor and the Legislature, serves as a clearinghouse and information center on adult and juvenile sentencing, and conducts ongoing research on sentencing and related issues.

The SGC consists of 20 voting members, 16 of whom are appointed by the Governor. The members include four superior court judges, two defense attorneys, two prosecutors, four citizens, the chief of a local law enforcement agency, one county elected official, one city elected official, and one administrator of juvenile court services. There are four ex-officio voting members: the Secretary of the DOC, the Director of the Office of Financial Management (OFM), the Chair of the Indeterminate Sentence Review Board, and the Director for the Juvenile Rehabilitation Administration. Four legislators are appointed by the leadership of the House of Representatives and the Senate and serve as nonvoting members. The SGC was authorized to appoint research staff to accomplish the duties of the SGC and a full-time executive director whose salary was fixed by the Governor.

In 2011 (pursuant to enactment of Engrossed Substitute Senate Bill 5891) the SGC was reorganized and became an advisory agency, located within the OFM. The position of the executive director was eliminated. The Caseload Forecast Council (CFC) became: (1) the clearinghouse and information center for adult and juvenile sentencing; (2) responsible for annually producing a statistical summary of adult felony sentencing and juvenile dispositions; and (3) responsible for publishing and maintaining the adult felony sentencing manual. The DOC assumed full responsibility for administering the interstate compact for adult offender supervision in the state.

Department of Commerce.

The Office of Crime Victims Advocacy within the Department of Commerce (COM) administers grant funds for community programs working with crime victims and assists communities in planning and implementing services for crime victims.

**Summary of Substitute Bill:**

Felony Sentencing for Property Crimes.

Most felony property offenses with a seriousness level of four and below are removed from the current seriousness level classifications and assigned a new seriousness level. A new sentencing grid is created with new, reduced standard ranges for those reclassified felony property offenses. Offenders convicted of a property offense, who have an offender score of two or more will also receive 12 months of community custody as part of their sentence.

Serious Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9 or more
4	15-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-24 months	24-30 months	30-36.5 months	36.5-42 months
3	10-90 days	15-180 days	20-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-24 months	24-30 months
2	3-90 days	10-120 days	15-180 days	20-180 days	30-240 days	30-300 days	12+-14 months	12+-16 months	14-18 months	16-20 months
1	3-60 days	3-90 days	10-120 days	20-180 days	30-240 days	30-300 days	30-300 days	12+-14 months	12+-16 months	14-18 months

The following felony property offenses are omitted from the newly created sentencing grid: Residential Burglary, Theft of Ammonia, and Theft of a Firearm. Therefore, sentencing for these offenses remains the same. Sentencing remains the same for all other felony offenses.

Length of Community Custody.

The length of time the DOC is authorized to supervise an offender on community custody is limited to the duration ordered pursuant to a sentencing alternative (terms are variable) or specified in statute (36, 18, or 12 months, depending on the type of crime as described above). The DOC is not authorized to supervise an offender for a period of community

custody in excess of those periods, such as additional periods of earned early release converted to community custody. The DOC must award positive achievement time to offenders who are in compliance with supervision terms and are making progress toward the goals of their individualized supervision case plan. For each month of community custody served, offenders may earn positive achievement time of 15 days. The period of time the DOC is authorized to supervise an offender may be reduced by positive achievement time. The following offenders are not eligible to earn positive achievement time:

- offenders convicted of Rape in the first or second degree, Rape of a Child in the first degree, Child Molestation in the first degree, Rape of a Child in the second degree, Indecent Liberties by Forcible Compulsion, certain offenses committed with sexual motivation, attempts to commit any of these offenses, or offenders convicted of certain offenses who have a prior conviction for a sex offense other than failure to register;
- offenders convicted of Aggravated First Degree Murder;
- offenders granted a first time offender waiver, parenting sentencing alternative, drug offender sentencing alternative, or special sex offender sentencing alternative;
- offenders subject to the interstate compact for adult offender supervision;
- offenders identified by the DOC as dangerous mentally ill offenders;
- offenders who have indeterminate sentences and are subject to parole; and
- offenders serving community custody pursuant to early release for persons convicted of crimes prior to their eighteenth birthdays.

#### Sentencing Guidelines Commission.

Two of the four superior court judges are removed from the SGC and three new members are added to the SGC: (1) a chief law enforcement officer; (2) the Chief Justice of the Washington Supreme Court or the Chief Justice's designee, as an ex-officio member; and (3) the Executive Director of the CFC or the executive director's designee, an ex-officio nonvoting member.

The SGC must work in conjunction with the CFC to review the following at least once per biennium:

- property crime rates;
- the impact on offender populations due to sentencing under the new property crime grid;
- recidivism rates;
- racial disproportionality impacts; and
- the effectiveness of the law enforcement grant programs created in the act.

Until January 2019, the SGC must report the results of the review to the Legislature no later than January 1 of each odd-numbered year.

#### Law Enforcement Grant Program.

The COM must establish a law enforcement grant program. Local law enforcement agencies must submit proposals to the COM that focus on increasing the capacity of the law enforcement agency to address property crime. The COM must use the SGC to evaluate grant applications and monitor the effectiveness of the grant projects. Preference must be given to grant applicants that can demonstrate a commitment to regional, multi-jurisdictional strategies, and that can clearly outline a comprehensive plan for municipalities to work with

law enforcement, community-based organizations, and government agencies to address property crime. The grants are one-time grants but may be renewed for effective programs as determined by the COM.

Workload Study.

The DOC must hire an independent consultant to perform a comprehensive workload study of the DOC's community corrections division. A preliminary report identifying the findings and recommendations must be submitted to the DOC and to the Legislature by June 30, 2017. The DOC must then provide a status update on the implementation of those recommendations to the Legislature no later than six months and one year after the initial report is received.

**Substitute Bill Compared to Original Bill:**

The substitute bill amends the property sentencing grid to increase the sentencing ranges in four cells and make them presumptive prison sentences. It includes the crime of Taking of a Motor Vehicle without Permission 1 as a property crime and ranks it as a seriousness level III on the new sentencing grid and makes Possession of a Stolen Vehicle and Theft of Motor Vehicle a seriousness level III instead of a seriousness level II. Instead of transferring it to be collocated with the CFC, the substitute bill maintains the location of the SGC within the OFM. Instead of a separately created advisory committee, the substitute bill requires the COM to use the SGC to evaluate grant applications and monitor the effectiveness of grant projects. The substitute bill eliminates the dedicated Property Supervision and Programs Account that was created in the original bill . The substitute bill directs the DOC to hire an independent consultant to perform a workload study for community corrections officers, which was not included in the original bill. Additionally, the substitute bill makes the effective date for positive achievement time July 1, 2015.

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**Appropriation:** None.

**Fiscal Note:** Requested on June 23, 2015.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3(4), relating to supervision for domestic violence offenders, and sections 3(8), 20, and 21, relating to positive achievement time, which take effect July 1, 2015, and section 4, which takes effect July 24, 2015.

**Staff Summary of Public Testimony:**

(In support) The concept of the Justice Reinvestment Taskforce is a good approach. Keeping people in prison for longer than other states do and expecting that alone to reduce our property crime is not reasonable. Getting offenders the treatment they need is important.

(In support with concerns) This legislation depends on a number of employees being added to the workforce. It is unclear where, if at all, there are employees added, but if there is a negative number of FTEs, that is a concern. We are happy with the constraints that have

been established on who can earn positive achievement time and when. We really need to have a workload study for Community Corrections Officers.

(In support of proposed substitute bill and opposed to original bill) The original bill would have negatively impacted counties. However, the substitute bill and the striker both alleviate these concerns. Prosecuting attorneys support the substitute bill; it is worth giving a try. It is important to clarify that the problem is not the length of sentences, the issue is about rehabilitation of offenders in prison and in the community.

(Opposed) Innovative ways to reduce recidivism are good, but we should not anticipate those savings ahead of time. Sentencing reductions are not a good idea, even if it will save the state money. It is bad public policy. Letting people out early will increase property crime. The grants to law enforcement are not enough to make a substantial difference in property crime rates. The projected reductions in crime are not achievable. We have some of the longest ranges of sentencing on the high end of the grid, but we also have very low sentences on the low end of the grid.

**Persons Testifying:** (In support) Steven Aldrich, Friends Committee on Washington Public Policy.

(In support with concerns) Matt Zuvich, Washington Federation of State Employees.

(In support of proposed substitute bill and opposed to original bill) Brian Enslow, Washington State Association of Counties; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Brad Tower, Washington Coalition of Crime Victim Advocates; and Mitch Barker, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.