

SENATE BILL REPORT

SB 5755

As Reported by Senate Committee On:
Law & Justice, February 18, 2015
Ways & Means, February 27, 2015

Title: An act relating to addressing and mitigating the impacts of property crimes in Washington state.

Brief Description: Addressing and mitigating the impacts of property crimes in Washington state.

Sponsors: Senators Hargrove, Hill, Ranker, Dammeier, Braun, Keiser, Billig, Becker, Brown, Kohl-Welles, Chase, Conway, Darneille, Hasegawa, Fain, Habib, Hewitt, Pedersen, Jayapal and McAuliffe.

Brief History:

Committee Activity: Law & Justice: 2/16/15, 2/18/15 [DPS-WM].
Ways & Means: 2/25/15, 2/27/15 [DP2S].

Brief Summary of Second 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.
- Provides a sunset review and termination of all sections of the bill after four years.
- Increases the seriousness level of three crimes dealing with illegally taking motor vehicles.
- Provides limited liability for Department of Corrections staff supervising offenders in the community.
- The bill affects all crimes committed after July 1, 2015.

SENATE COMMITTEE ON LAW & JUSTICE

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.

Majority Report: That Substitute Senate Bill No. 5755 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Lindsay Erickson (786-7465)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5755 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Staff: Travis Sugarman (786-7446)

Background: Felony Sentencing. The sentence imposed for a felony crime will depend on the severity, or seriousness level of the offense and the defendant's offender score. Felony crimes are separated into 16 different seriousness levels ranging from low – Level I, to high – Level XVI. 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 or offenses, 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 1 through 4.

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 also receive a term of community custody as part of their sentence:

- sex offenses;
- violent offenses;
- crimes against persons;
- drug 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 or associate.

Commission. The Sentencing Guidelines Commission (SGC) was created by the Legislature in 1981 as part of the Sentencing Reform Act. The SGC served 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, served as a clearinghouse and information center on adult and juvenile sentencing, and conducted ongoing research on sentencing and related issues.

The SGC developed the initial guidelines and continues to advise the Legislature on necessary adjustments. The Commission is composed of 20 voting members, 16 of whom are appointed by the Governor. Those 16 appointed members include the following: four superior court judges; two defense attorneys; two prosecutors; four citizens, one of whom is a victim of crime or a crime victims' advocate; one juvenile court administrator; one elected city official; one elected county official; and the chief of a local law enforcement agency. Four voting members serve in an ex-officio capacity to their state positions: the Secretary of the Department of Corrections (DOC); the Director of the Office of Financial Management (OFM); the Assistant Secretary of the Department of Social and Health Services' (DSHS) Juvenile Rehabilitation Administration; and the Chair of the Indeterminate Sentence Review Board. The Speaker of the House of Representatives and the President of the Senate each appoint two nonvoting members from their respective chamber, one from each of the two largest caucuses in each body. The Commission 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 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. DOC assumed full responsibility for administering the interstate compact for adult offender supervision in the state.

Victims of Crime. *Assistance to Victims.* The Washington's Crime Victims' Compensation Program (CVCP), within the Department of Labor and Industries (L&I) provides benefits to innocent victims of criminal acts. Generally, persons injured by a criminal act in

Washington, or their surviving spouses and dependents, are eligible to receive benefits – burial costs, medical treatment, and lost wages – under the CVCP.

Crime Victims Advocacy. 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.

Victim Notification. The Victim Information and Notification System, also known as VINE, automatically notifies a registered victim when various changes occur such as when an offender transfers to another facility, is discharged, changes custody or supervision levels, escapes, becomes noncompliant in certain instances, or has an upcoming court date.

Sunset Review. The Sunset Act requires the Joint Legislative Audit and Review Committee to conduct a sunset review of a program or agency and provide a report with recommendations regarding whether the program should be retained, modified, or allowed to terminate.

Summary of Bill (Recommended Second Substitute): Felony Sentencing. Most felony property offenses with a seriousness level of 4 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	5–90 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	5–60 days	5–90 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 were 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.

Sentencing Guidelines Commission. The SGC must monitor and report to the Governor and Legislature on the effectiveness of this act in reducing property crimes in Washington State. The SGC now consists of 18 voting members, as the result of the removal of two of the four superior court judges and the addition of one person who is the chief law enforcement officer of a city. The executive director of the CFC, or the director's designee, is appointed to the WJC as an ex-officio, nonvoting member. The SGC may also hire an executive director and

staff to carry out its mission. The SGC may request assistance from other state agencies including, but not limited to, the CFC, DOC, DSHS, and other agencies.

Grants. Law Enforcement Grant. COM must establish a law enforcement grant program. Local law enforcement agencies must submit proposals to COM that address property crime. COM must use an advisory committee 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, multijurisdictional 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.

Pretrial Grant. COM must establish a pretrial grant program. COM must identify at least one county to receive a grant that will test the impact of providing defendants with earlier access to pretrial defense counsel on pretrial outcomes and county budgets. COM must report to the SGC on the effectiveness of the grant programs.

Each of the grants listed above are one-time grants but may be renewed as determined by the WJC.

Racial and Ethnic Impact Statement. If one member from each of the two largest caucuses in the House of Representatives or the Senate request a racial and ethnic impact statement regarding legislation that has been introduced, the SGC must prepare an analysis that describes the effects of the proposed legislation on the racial and ethnic composition of the criminal offender population; or recipients of human services. A racial and ethnic impact statement must be impartial and understandable, and must include, for racial and ethnic groups for which data are available, the following: (1) an estimate of how the proposed legislation would change the racial and ethnic composition of the criminal offender population or recipients of human services; (2) a statement of the methodologies and assumptions used in preparing the estimate; and (3) if the racial and ethnic impact statement addresses the effect of proposed legislation on the criminal offender population, an estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.

Sunset Review. A sunset review and termination of the SGC and the sentencing provisions for property crimes, except provisions for habitual property offenders, are scheduled for the years 2021 and 2022, respectively.

The act is null and void unless funded in the budget.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Chemical dependency is added to the list of potential treatment available to offenders while under supervision. Taking motor vehicle without permission 2 moves from seriousness level III to seriousness level I. All sections and language related to habitual property offenders is removed. Liability is limited for Department of Corrections for tortious actions of a supervised offender unless reckless disregard of a known and immediate risk by the department is proven. Removes appropriations to COM and clarifies that grant programs will be subject to appropriation. Adds an effective date of July 1, 2015. All sections of the bill apply to sentences imposed for crimes committed on or after July 1,

2015. Sections related to Sentencing Guidelines Commission are made clear as to its role. Makes technical fixes to the offenses listed in the property offenses section to ensure all offenses intended to move are actually listed.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended First Substitute): Provides that a prosecuting attorney may file a special allegation when sufficient evidence exists to show that the accused is a habitual property offender, and also defines habitual property offender. Specifies the additional times that must be added to the standard sentencing range if the court finds that the offender is a habitual property offender. Seven of the new Property Offense Sentencing Grid cells are adjusted: zero is reinstated for three cells in the lower left corner, and four cells are moved back from jail time to prison time. Adds four crimes to seriousness level III: theft of a motor vehicle, possession of a stolen vehicle, and taking a motor vehicle without permission 1 and 2. Removes all references to the WJC and provides that the SGC will remain in effect. Provides sunset provisions for the SGC and all provisions of this act, except provisions relating to habitual property offenders. The name of the Crime Victims' Compensation Program is corrected.

Appropriation: In each fiscal year – 2016 and 2017, the following appropriations are provided: (1) a total of \$2 million for law enforcement property crime reduction grants; (2) a total of \$500,000 for county pretrial improvement grants; (3) a total of \$400,000 for new victim compensation benefits for victims of property crimes; and (4) a total of \$100,000 for the victim notification programs in King, Pierce, and Snohomish counties. A total of \$9 million is appropriated for the fiscal biennium 2016–17 to the DOC to fund the mandatory supervision of property offenders, community violator bed impacts, and mental health and cognitive behavior treatment and services.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: July 1, 2015.

Staff Summary of Public Testimony on Original Bill (Law & Justice): PRO: This bill is the result of findings and developed legislation from the Justice Reinvestment Task Force. There are three main findings from a report submitted by the Council of State Governments: (1) Unless the Legislature acts, the Washington prison population is projected to increase by over 1000 people over the next ten years at a cost of \$291 million in additional spending for taxpayers. This increase is due mostly to repeat property offenders. Washington sentencing guidelines only call for jail or prison time for repeat property offenders, unlike most other states which offer supervision and treatment sentencing options; (2) Washington now has the highest property crime rate in the nation. Nationwide, property crime rates have decreased by 11 percent, while in Washington, they have increased by 1 percent. Washington forbids the supervision of all property offenders once they are released from jail or prison. Over the last 30 years, repeat property offenders who are released from prison have not been subject to supervision or been ordered to treatment in Washington; offenders leaving jail have not been supervised over the last 11 years; and (3) To reduce property crime, Washington will need to take a comprehensive approach. This calls for a strategy of effective policing, a required one-year period of supervision and treatment for most property offenders, additional support

for victims of crime, and creation of grant programs. The idea of substituting incarceration for supervision makes sense, because supervision would be more effective to prevent future offenses and it would encourage public safety. But the supervision needs to be of high quality and needs to be adequately funded, otherwise this new structure will collapse. It is a good idea to broaden the scope of authority for what was previously the Sentencing Guidelines Commission, and what would now be the Washington Justice Commission.

CON: This proposal would not change the behavior of repeat property offenders once they leave jail or prison. Shortening every repeat property offender's sentence won't fix the problem; supervision and programs need to be implemented in order to prevent additional crimes committed by these repeat offenders. A dedicated account to fund the supervision program should be created, and this is similar to treatment accounts established in 2003 for drug offenders, and that was successful. For some property offenses, offenders would currently be sentenced to one year; under this proposal, that sentence would be one month. Our focus should also be on the victim, not only on the offender. The community deserves a break from these offenders; the current bill gives too much of a break to the offender and not enough of a break to the victims of these property crimes. There are significant costs: 80–100 community corrections officers would have to be hired to implement the necessary supervision, and programs would need to be funded. Additionally, the state assumes an enormous liability with an increased number of offenders on supervision in the community. Last year, the state spent more than \$20 million in DOC payments for tort suits brought against DOC relating to offender actions while on supervision. There is concern that this would shift state costs to county costs when offenders are sentenced to jail instead of prison.

OTHER: There needs to be a long-term commitment to funding this new property sentencing grid.

Persons Testifying (Law & Justice): PRO: Marshall Clement, Director of State Initiatives, Council of State Governments Justice Center; David Boerner, Chair, Sentencing Guidelines Commission; Bernard Warner, Secretary, DOC; Steven Aldrich, Friends Committee on WA Public Policy.

CON: Tom McBride, WA Assn. Prosecuting Attorneys; Dan Satterberg, King County Prosecuting Attorney; Brian Enslow, WA State Assn. of Counties; Judge Stephen Warning, Superior Court Judges Assn.; Mark Johnson, WA Retail Assn.

OTHER: Mitch Barker, WA Assn. of Sheriffs and Police Chiefs.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: A handout was provided to show the differences between the House and Senate bills, with a third column of compromise. There needs to be a dedicated account in order to ensure that the funding is available for the increased need for supervision under this bill.

CON: The Retail Association is concerned about thieves getting out earlier and continuing to steal from retail stores.

OTHER: The prosecutors are in support of the policy and now are concerned about the funding tied to the bill. The supervision and programming for offenders is necessary to

reduce recidivism. The prosecutors strongly urge putting a dedicated account in place that works like the Criminal Justice Treatment Account. The Association of Sheriffs and Police Chiefs are also concerned about funding and a dedicated account.

Persons Testifying (Ways & Means): PRO: Brian Enslow, WA State Assn. of Counties.

CON: Mark Johnson, WA Retail Assn.

OTHER: Jon Tunheim, WA Assn. of Prosecuting Attorneys, Thurston County Prosecuting Attorney; Mitch Barker, WA Assn. of Sheriffs and Police Chiefs.